SUPREME COURT OF THE UNITED STATES.

No. 370.

MARTIN HEMMERLE AND MARY McREE, PLAINTIFFS IN ERROR,

vs.

LEVI B. CLARK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 *Transcript.—Filed Oct 1st, 1859.*

STATE OF MISSOURI, *ss:*

Be it remembered, that on the first day of October, in the year of our Lord one thousand eight hundred and fifty-nine, there was filed in the clerk's office of the supreme court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause, to wit, Levi B. Clark *v.* Martin Hammerle and Mary McRee, lately pending in the St. Louis land court; which transcript is in the words and figures following, to wit:

Transcript from Saint Louis land court.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on the 17th day of September, in the year of our Lord one thousand eight hundred and fifty-six, there was filed in the office of the clerk of the St. Louis land court a petition, which petition is in the words and figures following, to wit:

Petition.

In the St. Louis land court, Oct. T., 1856.

LEVI B. CLARK, plaintiff,
vs.
MARTIN HAMMERLE, deft.

2 The plaintiff states, that on the 15th day of September, in the year 1856, he was entitled to the possession of a certain tract of land containing fourteen arpens and ninety-seven hundredths of an arpen, in the county aforesaid, being a part of a larger tract of land, which is one of the series of common field lots known as the Cul-de-sac fields, and which has been surveyed by the United States government, and is designated as survey No. 3,307, according to the records of the office of the surveyor general of Illinois and Missouri, which tract of 14 97-100 arpens is described as follows:

Beginning at a point in the northernmost line of said survey, 42 chains and 39 links westward of the N. E. corner of said survey, running thence westwardly with said northernmost line of said survey, 28 chains and 93 links to a point; thence at right angles 4 chains and 37½ links to the southernmost line of said survey; thence eastwardly with the said southernmost line, 28 chains and ninety-three links to a point; thence northwardly, at right angles, 4 chains and 37½ links, to the place of beginning.

3 Plaintiff further states that he, being so entitled, the defendant afterwards, on the 16th day of September, 1856, entered into and upon said premises, and unlawfully withholds possession thereof from plaintiff, whereby plaintiff has sustained damage to the amount of two hundred dollars; and therefor, and for his costs, &c., he prays judgment against defendant.

KRUM & HARDING,
Att'ys for Pl'ff.

Chester Harding, jr., being sworn, says that he is one of the attorneys of plaintiff, and that he believes the foregoing petition, and the matters therein as stated, to be true.

CHESTER HARDING, JR.

Sworn and subscribed before me this 17th day of September, 1856.
CHARLES A. MANTZ, *Cl'k.*

Upon the filing of the above petition, the clerk then issued to the sheriff of St. Louis county a summons, which summons is in the words and figures following, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis county, greeting:

We command you to summon Martin Hammerle before the judge of our St. Louis land court, on the first day of the next term
4 thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of October next, then and there to answer the complaint of Levi B. Clark, as set forth in the annexed petition, and have you then and there this writ.

Witness Charles A. Mantz, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 17th day of September, in the year of our Lord eighteen hundred and fifty-six.

[SEAL.] CHARLES A. MANTZ, *Clerk.*

Upon which summons the sheriff made his return in the words and figures following, to wit:

Sheriff's return.

Executed this writ in the county of St. Louis, on the 19th day of September, 1856, by delivering to the within-named Martin Hammerle a true copy of the within writ and petition, as furnished by the clerk.

JAMES CASTELLO, *Sh'ff.*
By ANDREW MURPHY, *D'y.*

And afterwards, the following proceedings were had in this cause, to wit:

October term, 1856.

5 *Answer filed.*

WEDNESDAY, *Nov. 12th*, 1856.

LEVI B. CLARK
vs.
MARTIN HAMMERLE.

Answer of Martin Hammerle filed; which answer of Martin Hammerle is in the words and figures following, to wit:

Answer.

In the St. Louis land court, Oct. T., 1856.

LEVI B. CLARK, pl'ff,
vs.
MARTIN HAMMERLE, def'd't.

The above-named defendant, for answer to said plaintiff's petition, says, that he denies that said plaintiff was, on said 15th day of September, 1856, or that he now is, entitled to the possession of the premises in his said petition described, or any part thereof.

Defendant further denies that on said day he entered into the possession thereof wrongfully, or that he unlawfully withholds the possession of said premises, or any part thereof, from the said plaintiff, or that the said plaintiff has sustained damage in the sum of two hundred dollars, or in any sum whatever, or that the said plaintiff is entitled to judgment therefor, or for the possession of said premises.

And the said defendant prays to hence discharged, with
6 his costs in this behalf expended.

HOLMES & ROMYN,
Def't's Atty's.

STATE OF MISSOURI, *County of St. Louis, ss:*

Martin Hammerle, the defendant, makes oath and says, he believes the said answer and the matters therein as stated, to be true.

MARTIN HAMMERLE.

Sworn to and subscribed before me, this 12th day of November, 1856.

RUD. HACKENRATH,
Justice of the Peace.

Leave to Mrs. McRee to be made a co-defendant.

And afterwards, the following further proceedings were had in this cause, to wit:

MONDAY, *Oct. 27th*, 1856.

LEVI B. CLARK
v.
MARTIN HAMMERLE.

On motion, leave is granted to Mrs. Mary McRee, to be made a co-defendant herein.

Mary McR.'s answer filed.

And afterwards, the following further proceedings were had in this cause, to wit:

SATURDAY, *Nov. 15th*, 1856.

LEVI B. CLARK
vs.
MARTIN HAMMERLE & MARY MCREE.

Answer of Mrs. Mary McRee filed; which answer of Mrs.
7 Mary McRee is in the words and figures following, to wit:

Answer of Mary McRee.

In the land court, October term, 1856.

LEVI B. CLARK
vs.
MARY MCREE *et al.*

The defendant denies that the plaintiff is, or ever was, entitled to the possession of the tract of land described in the petition, or that the same is one of the common field lots known as the Cul-de-sac fields.

This defendant knows nothing of any survey ever having been made, by or under the authority of the United States, of the said premises, except from what is stated in the petition.

The defendants aver that they, and those under whom they claim, have been in the uninterrupted, peaceable, and quiet possession of said premises, claiming the same against all the world, for more than twenty years before the commencement of this suit.

Wherefore they pray judgment, &c.

C. GIBSON, *P. Q.*

STATE OF MISSOURI, *County of St. Louis:*

Fergus McRee, agent of Mrs. MacRee, being sworn, says that he believes the above petition, and the matters as therein stated, are true.

F. McREE.

Sworn to and subscribed before me, this 15th day of No-
8 vember, 1856.

C. A. MANTZ, *Cl'k.*

Trial begun and continued.

And afterwards, the following further proceedings were had in this cause, to wit:

March term, 1859.—Friday, March 25th, 1859.—Trial begun.

LEVI B. CLARK
v.
MARTIN HAMMERLE & MRS. MARY MCREE.

Now, at this day, come said parties, by their respective attorneys, and thereupon come also a jury, to wit, John Gory, Stephen H. Buneman, E. H. Sowers, Christopher Sturbe, Samuel B. Urine, Wm. Bogcholy, Jacob Little, Wm. McKie, George W. Bell, Geo. Buschman, Henry Taylor, and H. Richter, twelve good and lawful men, who, being duly elected, tried, and sworn well and truly to try the issues between the parties herein, and a true verdict render according to the evidence, therefore the trial progressed, and not being fully terminated, is continued until to-morrow morning.

And afterwards the following further proceedings were had in this cause, to wit:

SATURDAY, *M'ch 26th*, 1859.

Trial progressed.

LEVI B. CLARK
vs.
MARTIN HAMMERLE AND MRS. MARY MCREE.

And now again at this day come said parties, by their respective attorneys, and thereupon also come the jury heretofore sworn in this cause. Therefore the trial progressed, and not being fully terminated, is continued until Monday morning.

And afterwards, the following further proceedings were had in this cause, to wit:

Trial ended.—Judgment.

LEVI B. CLARK
vs.
MARTIN HAMMERLE and MRS. MARY MCREE.

MONDAY, *March* 28, 1859.

And now again at this day come said parties by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, and therefore the trial progressed, and being fully terminated, the jury as aforesaid, on their oaths as aforesaid, find for the plaintiff, and assess his damages at the sum of fifty dollars, and the monthly value of the rents and profits of the premises in question at three dollars. It is therefore, upon the finding of the jury as aforesaid, ordered and adjudged by the court that the plain-
10 tiff recover of said defendants the possession of the premises described in the plaintiff's petition, being a certain tract of land containing 14 arpens and $\frac{97}{100}$ of an arpen, in the county aforesaid, being a part of a larger tract of land which is one of the series of common field lots, known as the Cul-se-sac fields, and which has been surveyed by the United States government, and is designated as survey No. 3,307, according to the records of the office of surveyor general of Illinois and Missouri, which tract of $14\frac{97}{100}$ arpents, is described as follows, viz: beginning at a point in the northernmost line of said survey, 42 chains and 39 links westward of the N. E. corner of said survey; run. ing thence westwardly with said northernmost line of said survey, 28 chains and 93 links to a point; thence at right angles 4 chains and $37\frac{1}{2}$ links to the southernmost line of said survey; thence eastwardly with the said southernmost line of said survey, 8 chains and 93 links to a point; thence northwardly at right angles, 4 chains and $37\frac{1}{2}$ links, to the place of beginning.

And also the said plaintiff recover of the said defendants the damages and monthly value aforesaid, in form aforesaid as assessed, and also his costs and charges herein expended, and have a writ of
11 possession therefor. Verdict filed in this cause.

And afterwards, to wit, on the same day the following further proceedings were had in this cause, to wit:

Motion for new trial filed in this cause.

LEVI B. CLARK
vs.
MARTIN HAMMERLE and MRS. MARY MCREE.

Which motion for new trial is in the words and figures following, to wit:

Motion.

LEVI B. CLARK
vs.
MARTIN HAMMERLE and MARY MCREE.

LAND COURT, MARCH TERM, 1859.

The defendants move the court to set aside the verdict in this case and grant them a new trial, because:

1st. The verdict is against the evidence.

2d. The verdict is without any evidence sufficient to support it.

3d. The verdict is against law.

4th. The verdict is against the instructions of the court.

5th. The court erred in admitting to the jury improper testimony on the part of the plaintiff.

6th. The court erred in refusing to admit to the jury proper and lawful testimony offered by the defendants.

12 7th. The court erred in giving to the jury at the instance of the plaintiff improper and illegal instructions.

8th. The court erred in refusing to give to the jury at the instance of the defendants proper and legal instructions.

By atty. C. GIBSON, E. BATES.

And afterwards, the following further proceedings were had in this cause, to wit:

Motion for new trial overruled.

LEVI B. CLARK
vs.
MARTIN HAMMERLE and MRS. MARY MCREE.

WEDNESDAY, *May 11th*, 1859.

Now at this day, the court being fully advised of and concerning the motion heretofore filed in this cause for a new trial, doth order and adjudge that said motion be overruled.

And afterwards, the following further proceedings were had in this cause, to wit:

Bill of exceptions filed in this cause.

LEVI B. CLARK
vs.
MARTIN HAMMERLE and MRS. MARY MCREE.

SATURDAY, *May* 28, '59.

Which bill of exceptions is in the words and figures following, to wit:

13 *Bill of exceptions.*

In the St. Louis land court.

LEVI B. CLARK
vs.
MARTIN HAMMERLE *et al.*

Pl'ffs evidence.

Be it remembered, that on the trial of the above cause the plaintiff gave in evidence the following documents:

Registry of confirmation.

1. Copy of registry of confirmation by Hunt, from p. 116.

Testimony relating to town and village lots, out lots and common field lots, in, adjoining, or belonging to the several towns or villages of Potage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa-a Robert, Carondolet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26th, 1824.

THEODORE HUNT,
Recorder Land Titles.

See Hunt's minutes, No. 1, p. 1.

Joachim Roy's legal representatives claim a common field lot in the Cul-de-sac, containing one arpen and a half in front by about thirty in depth; bounded N. by the field lot claimed by Amable Guyon's legal representatives; S. by the field lot claimed by Bere Tabeau's legal representatives; E. by Auguste Chauteau's mill tract, and
14 W. by Charles Gratiot.

(Here follows the depositions, which is omitted by instruction of the parties to this suit.—Clerk.)

See Hunt's minutes, No. 2, p. 116.

RECORDER'S OFFICE,
Saint Louis, 17 *Oct.*, 1858.

I certify that the foregoing is correctly transcribed from the books in this office containing the minutes of the testimony taken by the

recorder of land titles, Theodore Hunt, pursuant to the first section of the act of Congress approved on the 26th May, 1824, supplementary to the act of 13th June, 1812, making further provision for settling the claims to land in the Territory of Missouri.

ADOLPH RENARD,

15 *U. S. Recorder of Land Titles in the State of Mo.*

Registry of certificates of confirmation on town lots, out lots, and common field lots issued by the recorder of land titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity.
Joachin Roy's legal representatives.	1825. July 30th.	Common field lot Cul-de-sac, near St. Louis.	Bounded N. by the field lot claimed by Amable Guyon's legal rep's; S. by the field lot claimed by Bere Tabeau's leg. rep's; E. by Aug. Chauteau's mill tract; and W. by Charles Gratiot.	One and one half front, by about thirty deep.

RECORDER'S OFFICE,
St. Louis, 17th Oct., 1858.

The above is correctly transcribed from the original list on file in this office, which was prescribed by the 3d section of the act of Congress of the 26th May, 1824, supplemental to the act of 13th June, 1812, making further provision for settling the claims to land in the Territory of Missouri.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

The defendant objected to the admission of this document, because it was incompetent, and could have no effect against the title admitted to be in the defendants; but the court overruled these objections, and the defendants excepted thereto at the time.

Will of Joachim Roy.

2. Will of Joachin Roy, dated 28th May, 1789.

An nom de Dieu et de la Glorieuse Vierge Marie, L'an mil sept cent quatre vingt neuf, le vingt huit, du mois de mars, avant, midy, par devant moy, Don Manuel Perez, Cap'ne au regiment fixe de la Louisianne, Lieutenant Governor, command en chef de la partie occidentale et districts des Illinois, (a de faut de notaire,) a ete present en personne, le nomme Joachim Roy, citoyen de ceposte, garcon majeur, usant de ser droits; le quel etant en bonne santee de corps

16 et desprit, memoire et jugement, ainsy quil est appare a nous soussignes, etant meme venu expres a L'effet des presentes, craignant d'etre surpris par la mort sans avoir dispose de ses dernieres volontes, a fait, dicte et nomme son testament en la maniere suivante.

Premierement: comme chritien catholique, apostolique, et Romain, la quelle religion a toujours pratique, en foy de laquelle protestant de vivre et mourir, a recommande son ame dieu, le supplicant, par les meriter de la mort et passion de Notre seigneur Jesus Christ, de lui faire misericorde: a elu sa sepulture dans le cimetiere de cette parroise, l'aissant la disposition de ses funerailles a la volunte de son heretiere ci apres nommee, auquil il s'en Rapporte entierement.

Veut et ordonne que huit jours apres son deces soit celibre un service de reqiem pour le repor de son ame, et qui soit remis en outre du produit de ses biens, cinquante livres en argent au cure de cette parroise pour, employer en messes basses a son entention. Desire et entend, et c'est son volunte ques toutes, ses deptes soient payees, tant par billets que par comptes quils paroitronts legitimes. Declare, et ce est sa dernier volonte, quil nomme et institue pour son unique heretiere de tous les biens meubles immeubles, generallement
17 quel conquer a't liu appartenant en ce porte St. Louis des Illinois. Ladame Veronique Guitard, Epouze de Pierre caillou, pour elle en jouive et disposer d'abord apres le de ces du testateur comme un bien a elle appartenant en propre, apres deptes payees, sans qu'aucun pavent du dit testateur la puisse traubler, ny inquieter, telles sont ses volontes.

Revoquant tous ses precendents testament, codiciles et dispositions finales voulant que le present soit le seul execute d'abord apres son dices, tant par cette voix que par celle de codicile et par toute autre meilleure forme que testament pent et soit valoir et subsister de droil. Fait et passe en L'elude du government, au porte St. Louis des Illinois, en presence des sieurs. Don Benito de Vasquis, Charles Sauguinet, Joseph Robidoux, Francois Bauere, Louis Dubreuil, Emilian Yosti, et Gaspard Roubien, tous citoyen et domicillies en ce poste, quils ont signe avec nous lieutenant governeur, le dit testateur ayant declare ne savoir ecrere a fait sa marque ordinaire, d'une croix, meme jour et ans que dessus.

(Marque + ordinaire de Joachim Roy.)

E. YOSTI, *Temoin.*

Barere, temoin, J'h Robidou, Ch'le Sauguinet, L'u Du Benil, Berito Vasques, Gasp'd Roubien Manuel Perez.

18 STATE OF MISSOURI,
County of St. Louis, ss:

I, John Ruland, cl'k of the circuit court and ex officio officer recorder for the county aforesaid, certify that the foregoing instrument of writing was filed for record in my office on the 27th day of July,

1840, and is truly recorded in volume the first of French and Spanish archives, at pp. 372, 373, and 374.

Given under my hand and seal of office this 27th day of July A. D. 1840.

[SEAL.] JNO. RULAND, *Recorder.*

Translation of Joachim Roy's will.

In the name of God and the Blessed Virgin Mary, in the year one thousand seven hundred and eighty-nine, on the twenty-eighth day of the month of March, before twelve o'clock, before me, Don Manuel Perez, captain of the fixed regiment of Louisiana, lieutenant governor commanding in chief of the western part and district of Illinois, (for want of a notary public,) was personally present one named Joachim Roy, citizen of this post, a single man of lawful age, having his fortune at his own disposal; who, being in good health and of sound mind, memory, and judgment, as it appeared to us, the undersigned, coming here in person expressly for the execution of
19 these presents, and apprehending to be overtaken by death without having disposed of his last intentions, has made, dictated, and named his testament in the following manner:

Firstly. As a Catholic, Apostolic, and Roman Christian, having always practiced the Apostolic religion, and protesting to live and die in it, he has recommended his soul to God, imploring him, in consideration of the death and suffering of our Lord Jesus Christ, to have mercy on him, and has chosen to be buried in the cemetery of this parish, leaving his funeral at the disposal of his heiress hereafter named, to whom he entirely refers. The said testator intends and directs, that eight days after his death a mass of requiem shall be offered up for the repose of his soul, and that, out of the proceeds of his property, fifty livres in cash shall be given to the priest of this parish, to be employed in saying low masses upon his account.

The said testator wishes and intends that all his lawful debts should be paid, consisting of notes or current accounts.

The said testator declares, and this is his last will, that he names and institutes for his sole heiress of all the goods, movable and immovable, whatsoever, belonging to him in this post of St. Louis,
20 of Illinois, Veronique Guitard, widow of Pierre Cailloux, to be enjoyed and disposed of by her immediately after the death of the testator, as goods belonging to her, after the debts have been paid, with trouble or molestation from the part of any relations of the said testator. Such are his intentions, revoking all preceding testament, codicils, and final dispositions, requesting the present testament to be the only one executed immediately after his death, as well by form of testament, or by that of codicil, or by any other better form in which testament and must be good and lawfully subsist.

Made and executed in the office of the government, at the post of St. Louis, of Illinois, in presence of Benito de Basquez, Charles Sauguinet, Joseph Robidoux, Francois Barriere, Louis Dubreuil, Emilien Yosti, and Gaspard Roubien, all of them citizens, and re-

siding in this post, who have signed together with me, lieutenant governor.

The said testator having declared not to know how to write, has made his usual mark with a cross, the same day and year as above.

his
JOACHIM + ROY.
mark.

E. Yosti, witness; Joseph Robidoux, Ch'le Sauguinet, Benito Vasquez, Manuel Perez, Barare, witnesses; L'u Du Bruiel,
21 Gasp'd Roubien.

Exceptions to Roy's will.

The defendants objected to the admission of this document, because it was not properly proved nor had ever been acted upon, nor set up by any person as a will; the devisee therein had never claimed anything under it; nor was it ever produced before any judge or officer.

These objections the court overruled, and the defendants excepted thereto at the time.

At the same time, and conjointly with the said will, the plaintiff offered the following certified copy thereof:

Certified copy of Roy's will.

An nom de Dieu et de la Glorieuse Vierge Marie, l'an mil sept cent quatre vingt neuf, le vingt huit du moir de Mars, avant midy, par devant moy Don Manuel Perez, Capitaine au Regiment fixe de la Louisianne, lieutenant gouveneur, commandant en chef de la partie occidentale et district des Illinois (a defant de notaire), a ete present en personne le nomme Joachim Roy, citoyen de ce poste, garcon majeur, usant de su droits, lequel etant en bonne santee de corps et d'esprit, memoire, et jugement, ainsi qu'il est appare a nous sousignes, etant meme venu expres a l'effet des presentes, cregnant d'etre surpris par la mort sous avoir dispose de ser derniers volontes, a
22 fait dicte et nomme son testament en la maniere suivante:

PREMIEREMENT: Comme christian C. A. Romain, la quelle religion a toujour pratique en foy, de la quelle protestant de vive et mourier, a recommande sou ame a Dieu, le suppliant par les merites de la mort et Lassion de notre seigneur Jesu Christ, delui faire miseri corde; a elu sa sepulture dans le cimetier de cette parroisse, l'aissant la disposition de ses funerailles a la volonte de son heretiere cy apres nommes au quelle il s'en rapparte entierement. Vent et ordonne, que huit jours apres son de ces soit celebre un service de requiem pour le repor de son ame, et qui soit reunis en outre de produit de sis biens cinquente livres en argent au cure de cette Parroisse, pour employer en messes basses a son intention. Desire et entend, et ce est sa volonte, que toutes ser deptes soient pagees, tant par billets que par comtes quils paroitront legitimes. Declare, et ce est sa dernier volonte, quil nomme et institu pour son hunique heritiere de tours les

biens, membles, ymmeubles, generalement quil conquer alui appartenant en ce poste St. Louis des Illinois la dame Veronique Guitard, epouse de Pierre Caillou, pour elle enjouise et disposser d'abord apres le deces du testatur, comme un bien a elle appartenant
23 en propre, apres les deptes payees, sans qu' aucun purrent du dit testateur la puisse troubler ny inquieter. Telles sont ses volontes.

Revoquant tous ses precedentes testaments, codicilles, et dispositions finales, voulant que le present soit le seul execute d'abord apres son deces, tant par cette voix que par celle de codicille, et par tout autre melleure forme que testament pent etre et valoir et subsister de droit.

Fait et passe en l' etude du gouvernment au Poste St. Louis des Illinois, en presence des Sieurs D'n Benito Vasquez, Charles Sauguinet, Joseph Robidoux, Francois Barriere, Louis Dubreuil, Emilian Yosti, et Gaspard Roubien, tou citoyens et domicillies en ce poste, quils ont signes avec nous, lieutenant gouverneur. Le dit testateur agent declare ne savoir signe, a fait so marque d'une croix, meme jour et au que dessees.

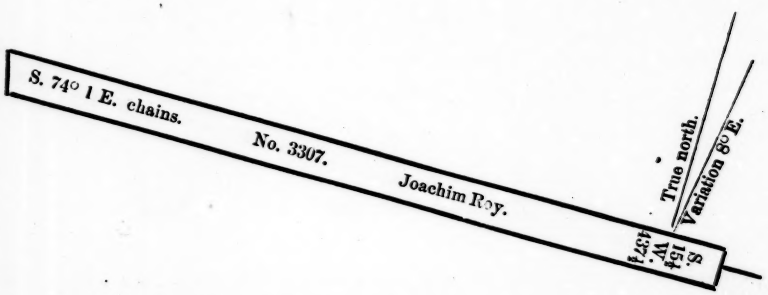
Une croix, pour marque de Joachim Roy; Barrere; Emilian Yosti; Joseph Robidou; Charles Sauguinet; Louis Dubreuil; Benito Vasquez; Gaspard Roubien; Manuel Perez.

D'n Charles Dehault Delassus, lieutenant colonel de Armes de S. M. et lieutenant gouverneur de la haute Louisianne, certifie que la precedente copie est conforme a l'original, que est depossee aux archives de cet gouvernment, et a petition de part je donne la
24 presente, a St. Louis des Illinois le 24 Juillet d 1801.

DELASSUS.

3. United States survey, No. 3,307.

Plat and description of a survey of a lot, 1½ by about 30 arpens deep, in the Cul-de-soc fields, claimed by the legal representatives of Joachim Roy, and the boundaries and extent thereof, proven before the recorder of land titles on the day of , 1825, under the act of Congress of the 26th May, 1824.



Scale 20 chains to an inch.

Description.

Commence at the N. E. corner of the lot, being the S. E. corner of the lot of , on the western boundary of Auguste Chouteau's survey, No. ; thence S. 15¼ W. 135, a stone, the S. W. corner of Chouteau's said survey; 437 chains, set a post for the S. E. corner of this lot, and touching said post on the west side, I set a limestone 4 in. thick, 6 in. wide, and 20 inches long, from which comes a plum tree, 4 in. diameter, bears N. 89 W., 91 links, and a crab-
25 apple tree, 5 in. diameter, bears S. 76½ E., 148 links distant; thence N. 74° W., along the southern boundary of this lot, which is the northern boundary of the lot of Hubert dit Berry Tabeau's legal representatives, 15 chains, the road leading northeastward to St. Louis, 71.32 chains; Chouteau's farm bears N. 7½° E., 85.24 chains; the S. W. corner of this lot, and N. W. corner of the lot of Hubert dit Berry Tabeau's rep's on the eastern boundary of Charles Gratiot's survey, No. 2,037, for which I set a post—from which a pin oak, 10 inches in diameter, bears N. 36¾° E., 162 links, and a persimmon, 4½ in. diameter bears S. 57½ E., 59 links distant; thence N. 9° E. along the western boundary of the this lot, the eastern boundary of Gratiot's said survey, 438½ chains, the N. W. corner of this survey, and S. W. corner of the lot of—.

(On the margin of the foregoing are the words and figures following, to wit:—Clerk land court.)

SURVEYOR GENERAL'S OFFICE,
St. Louis, 13th April, 1841.

Upon examining the papers relating to this claim, furnished by Wm. E. Lane, the proprietor thereof, I find that its southern boundary must be extended eastward so far as to make its whole length 40 arpens, unless it comes in contact with the claim of Motard, in which event it will stop at Motard's western boundary.

WILLIAM MILBURN,
Surveyor General.

26 Surveyed by Joseph C. Brown in 1839, and approved with the exception noted in the margin.

WILLIAM MILBURN,
Surveyor General.

OFFICE OF THE SURVEYOR GEN'L FOR ILL'S AND MO.,
St. Louis, 12th January, 1857.

The above is correctly transcribed from the original thereof on file in this office.

JOHN LOUGHBOROUGH,
Surveyor Gen'l.

Exceptions to survey 3,307.

Defendants objected to the admission of this document as not being properly approved, and as not being any evidence against the defendants' title; which objections the court overruled, and the defendants excepted to the same at the time.

U. S. survey in 1857.

4. United States survey made in 1857. Survey No. 3,307.

Plat and transcript of the survey of a tract of 38 acres and 26-100 of an acre of land, situated in the Cul-de-sac common-field of St. Louis, in township 45 N. of the base line, and range 7 E. of the 5th principal meridian, in the State of Missouri, executed in part in 1839 by Joseph C. Brown, deputy surveyor, under his contract with
27 Elias T. Langham, surveyor general for Illinois and Missouri, dated the 15th day of September, 1835; and in part by Joseph Indest, on the 14th March, 1857, under instructions from John Loughborough, surveyor general for the said States, dated the 13th March, 1857; it being the lot of "1½ by about 30 arpents," confirmed to Joachim Roy's legal representatives by the act of Congress, approved on the 13th June, 1812, the extent and boundaries whereof were proven before Theodore Hunt, recorder of land titles, on the 7th and 30th July, 1825, pursuant to the first section of the act of Congress, approved on the 26th May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provision for settling the claims to land in the Territory of Missouri.' "—(See Hunt's minutes, book No. 2, pp. 49 and 116, in the recorder's office, and No. of his list.)

28 *Plat.*

[Here follows map, marked page 28]

29 *Description of U. S. survey.*

Description:

Begin at a post set on the side of a limestone, about 8 in. long, and about 3 in. on each of the other sides, set for a corner to this survey, and the S. E. corner of survey numbered two thousand seven hundred and ninety-three, for Amable Guyon, or Veuve Lecompte's legal representatives, on the W. boundary of survey numbered three hundred and sixty-three, for Auguste Chouteau, under Laclede Liguest.

Then south 14 degrees 15 minutes west, along Chouteau's line, 1 chain 35 links, to a limestone 8 inches square, marked with the letter "M" on the top, set at the southerly edge of Chouteau avenue, a corner to this survey, and the S. W. corner of the Chouteau survey.

Thence S. 75° E., along the southern line of the Chouteau survey, 2 chains 34 links, to a stake at the southern edge of Chouteau avenue, set for a corner to this survey, and the N. W. corner of survey numbered three thousand one hundred and eighty-two, for Joseph Motard, or his legal representatives; from which stake the S. E. corner post of a wooden bridge bears N. 70° 30′ W., 78 links distant, and the N. W. corner of survey numbered three thousand one hundred and twenty-five, of the commons of St. Louis, bears S. 75° E., 3 chains 55 links distant.

30 Thence S. 17° 51′ W., along the most eastern line of this survey, and the western line of the Motard survey, 3 chains 3 links, to a stake set for the S. E. corner of this survey, on the N. border of survey numbered three thousand three hundred and eight, for Hubert dit Tabeau's representatives; from which stake the N. W. corner of a frame house; within the Motard survey, bears S. 72° 30′ east, about 3 chains distant, and the S. W. corner of a brick house bears N. 51° 40′ E., about distant.

Thence N. 74° W., with the southern line of this survey and the northern line of the Tabeau survey, 2 chains 21 links, to a limestone 4 in. thick, 6 in. wide, and 20 in. long, 17 chains 21 links, to the road leading northeastward to St. Louis, 73 chains 53 links, to Chouteau's fence, bearing N. 7° 30′ E., and at 87 chains 45 links, a post set for the S. W. corner of this survey, and the N. W. corner of the Tabeau survey, on the eastern line of survey, numbered two thousand and thirty-seven, for Charles Gratiot; from which post a pin oak, 10 in. in diameter, bears N. 36° 45′ E., 162 links distant, and a persimmon, 4½ in. in diameter, bears S. 57° 30′ E., 59 links distant.

Thence N. 59° E., along the western line of this survey, and the eastern line of the Gratiot survey, at 4 chains 38½ links, a post set for the S. W. corner of the Guyon or Lecompte survey, and
31 the N. W. corner of this survey, from which a pin oak, 6 in. in diameter, bears S. 27° 45′ W., 56 links distant, and an old stone in Gratiot's line bears S. 9° W., 61 links distant.

Thence S. 74° E., with the northern line of this survey and the southern line of the Guyon or Lecompte survey, 74 chains to the road leading southwestward from St. Louis, 85 chains 40 links, to a branch 8 links wide, bears northeasterly, and at 86 chains the beginning corner.

OFFICE OF THE SURVEYOR GEN'L FOR ILLS. AND MISSOURI,
Saint Louis, March 19th, 1857.

The foregoing plat and transcript of survey, numbered three thousand three hundred and seven, are this day approved as recorded on pages 285 and 286 of this book.

(S.) JOHN LOUGHBOROUGH,
Surveyor General.

OFFICE OF THE SURVEYOR GEN'L FOR ILLS. AND MO.,
St. Louis, 20th March, 1857.

The foregoing plat and transcript of survey, numbered three thousand three hundred and seven, are correctly copied from pp. 285 and 286 of record book F, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

To ADOLPH RENARD, Esq.,
Recorder of Land Titles, Saint Louis, Mo.

32 RECORDER'S OFFICE,
St. Louis, 24th March, 1857.

I have this day issued confirmation certificate No. 137 on the foregoing survey, according to law and instruction.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Exceptions to survey.

The defendants made the same objections to the admission of this survey that were made to the first, that it was incompetent, not approved, no evidence against the defendants, and also that the surveyor had no authority to make it; but the court overruled all the objections, to which the defendants at the time excepted.

5. *Certificate of burial of J. Roy.*

Le vingt cinq juin, mil huit cent un. Joachim Roy, fils de Francois Roy et de Charlotte Chamaillard des legitimes pere et mere, age de cinquante cinq ans desde de hier, a ete par nous soussigne in hume au cimetiere de ce ( ) en presence de Jean B'te Trudeau et de Jean B'te Duffeau et d'aures parens tous de cette paroisse qui declarrent ne savoir signer.

JANIN, *Cure.*

6. *Certificate of burial of V. Guitard.*

33 Le huitieme jour de Decembre, de l'an mil huit cent huit, a ete inhume par moy soussigne dans la cemetiere de cette paroisse le corps de Veronique Guitard, veuve de Joachim Roy, agee d'environ de decedee hier, en foi de quoi jai signe a deffaut de cure.

J. B'TE TRUDEAU, *Chantre.*

I, the undersigned, priest of the Catholic Roman church at the cathedral of St. Louis, in the city of St. Louis, in the State of Missouri, and having charge of the register of baptisms, marriages, and burials, required by the ordinances and customs of the Roman Catholic church and said cathedral to be kept thereof, do hereby certify that the above are copies of the registry of the burial of Joachim Roy and Veronique Guitard, widow of Joachim Roy, as contained in the registers of burials kept by me at said cathedral.

In faith of which I signed.

St. Louis, 2d of June, 1857.

EDM. SAULNIER.

Subscribed and sworn to before me, this 2d day of June, A. D. 1857.

[SEAL.] R. S. VOORHIS,
Notary Public within and for the County of St. Louis, Mo.

7. *Will of V. Guitard.*

Pardevant le notaire de la ville et district de St. Louis, ter-
34 ritoire de la Louisianne, y residant, et en presence des temoins soussignes, les Sieurs Joseph Charleville, Louis Delille, et Joseph Labbardie, domicilies en ces district, a ce requis et appelles. Nous sommes transportes en la maison de Veroniqne Guitarre, veuve de feu Joachim Roy, situee en cette ville, la quelle dit Veron¡que Guitarre etant au lit malade, saine ne aunioens, d'esprit, de memo¡res, et d'entendment, considerant qu'il ny a rien de plus certain q$_{u}$e la mort, et vien de plus incertain que cette dernier heure, n'en vo lant etre prenevener sans avoir au pravant disposee du peu de bien qu'il a plus a Dieu lui donner en ce monde, a faite dictee et nommee le present son testament, en la forme et maniere suivante.

Premierement. Comme bonne Christienne Catholiqne, apostolique, et Romanique, a recommandee son ame a Dieu, le pere tout puissant, a latres Sainte Vierge, a tous les saints et saintes de la cour Celeste, et a Sainte Veronique, a patrone, les suppliants d'interceder pour elle apris de notre seigneur Jesus Christ, pour qu'il lui plaise, par les merites et gouffrances de son passion, de placer son ame au Royaume des bien hereux.

35 Veut et ordonne la dit testatrice, qui apris sa mort, son corps soit enterree dans le cimetiere de l'eglise de St. Louis, et qu'il lui soit dit un service et trois masses de l'ame pour le repos de son ame. Veut et ordonne ladite testatrice, que ses dettes soient payees, et torts repaires si ancuns se trouvent.

Veut et ordonne ladite testatrice, que apres so mort, les proprieties quelle laissera soient, regis et gouvernes par le St. Bernard Pratte ecuyer demeurent en ce dit district, comme son exeeuter testamentaire, au quelle elle a communique des derniers volontes, le priant d'en vouloir prendre la peine et de les regis et gouverner suivant les rues qu'il lui a particulairement dictees.

Ladite testatrice declare quelle a ete Mariee avec Pierre Cayoux en premiere noce et avec Joachim Roy en seconde noce, du quel premier mariage elle a eue quatre enfans existans, savoir: Francois Cayoux, Eustache Cayoux, et Louis Cayoux, et Joseph de Cayoux, lesquel enfans, tous majeurs, elle a reconnue avoir eue de legitime mariage avec les dit Pierre Cayoux, son premier mari, et qu acun enfans n'est issee du segond mariage avec Joachim Roy.

Veut et ordonne ladite testatrice, et donne et legue a Louis Cayoux, en recompense de tous les services quelle en a recu, un cheval rouge etempe R. I., ainsi qu'une roche caille et son veau, et le plues grand lit que est dans la maison, pour qu'il en jouisse, avec la benediction de Dieu et la sienne.

Veut et ordonne ladite testatrice a Veronique Roy, sa petite fille, fille legitime (agee de sieze ans) de Joseph Roy et de Josephte
36 Cayoux, ses legitimes pere et mere, une vache rouge et son veau, ainsi qu' une petite armoire qui est dans la maison de la dite testatrice, pourvu tante fois quelle restes avec ses pere et mere

jusque au jour de son mariage, et en jouisse avec la benediction de Dieu et la sienne; et ce, pour la part quelle legue a sa dit mere.

Veut et ordonne ladite testatrice, qui apres sa mort le reste de ses proprietes qui elles laisera soient egalement partiges et diviser entre ses deux autres enfans, Francois Cayoux et Eustache Cayoux, pour qu'ils en jouissent avec la benediction de Dieu et la sienne, et surtout qu'ils ne fassent ancuns proces ayent ancunes difficultis.

Ce fut ainsi fait dicte et nomme le present son testament, et a elle lu, et relu, par nous notaire susdit, en presence des dits temoins, quelle a dit avoir bien entendue, el est le meme quelle a pretendue faire, revoquant tous autres testaments, codiciles, et donations, quelle pourrait avoir fait avant celui ce auquel seul elle sarrete comme etant son intention et derniere volonte, fait et passee en ladite maison ou de meure ladite testatrice en la ville et la district de Saint Louis, ter-
ritoire de la Louisianne, le dix neuf Aoust, de l'annee notre
37 seigneur mil huit cent huit a sept heures du soir, et a ladite testatrice, avec les diis temoins, et nous notaires susdite signe sa marque ordinaire, les dits jour, an, et heure, que dessus. Le "mot trois" rayes Nul, et les mots "et Josephte Cayoux" en interligne, ainsi que le mot "quatre," approves bon, avant la signature du present testament.

marque
DE VERONIQUE × GUITARRE.
testatrice.
M. P. LE DUC, *Notaire Public.*

Signe en presence de nous—
JH. CHARLEVILLE.
marque.
DE × LOUIS DELILLE.
JOSEPH LABADIE.

Proof of will of V. Guitard.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that at a term of the county court within and for the county aforesaid, begun and held at the city of St. Louis, in said county, on the first Monday of November, in the year of our Lord eighteen hundred and thirty-six, personally appeared in open court, on the 22d day of November, in the year aforesaid, Mary P. Le Duc, one of the subscribing witnesses to the foregoing instrument of writing, who, being duly sworn upon his oath according to law, deposed and said that he was present, and did see Veronique Guitarre make her mark to the said instrument of writing by way of
signing the same, and heard her publish, pronounce, and de-
38 clare the same to be her last will and testament; and that at the time of so doing, she, the said testatrix, was of sound and disposing mind, to the best of his knowledge, observation, and belief; and that he, the said deponent, and Joseph Charleville and Joseph Labardie, two of the subscribing witnesses to the same, subscribed their names thereto, in the presence and at the request of

the testatrix, and Louis Delille, the other subscribing witness thereto, made his mark to the same by way of signing his name thereto, also, in the presence and at the request of the testatrix. and in the presence of each other as witnesses to the same. Whereupon it was considered by said court that the foregoing instrument of writing was duly proved to be the last will and testament of the said Veronique Guitarre, and ordered the same to be recorded.

In testimony whereof, I, Henry Chauteau, clerk of said county court, have hereunto set my hand and the seal of said court, at the city of St. Louis, this 22d day of November, in the year of our Lord 1836.

[SEAL.] HENRY CHAUTEAU, *Clk.*

39 STATE OF MISSOURI, *County of St. Louis, ss:*

I, Peter Ferguson, judge of probate, of the county of St. Louis, certify that the foregoing is a true copy of the last will and testament of Veronique Guitarre, and of the certificate of the probate thereof, as the same now remains of record in my office, in the record of letters and wills, book B., p. 317, and following.

In testimony whereof, I hereto set my hand and affix the seal of the probate court of the county aforesaid, at office in said county, this day of January, 1857.

[SEAL.] PETER FERGUSON,
Judge of Probate.

Translation.

Before the notary public of the town and district of St. Louis, Territory of Louisiana, residing there, and in presence of the undersigned witnesses, Joseph Charleville, Louis Delille, and Joseph Labbadie, residing in this district, requested and called ad hoc, we went to the house of Veronique Guitarre, widow of the late Joachim Roy, which house is situated in this town; which said Veronique Guitarre, being sick in bed, but of sound mind, memory, and understanding, considering that nothing is more certain than death,
40 and nothing more uncertain than that last hour, wishing not to be prevented by it, without having disposed of the limited goods which it has pleased God to give her in this world, has dictated and named these presents her testament in the following form and manner:

Firstly. As a good Catholic, Apostolic and Roman Christian, she has recommended her soul to God the Almighty Father, to the most Blessed Virgin, all the Saints of the Celestial Court, and St. Veronique, her patroness, imploring them to solicit for her our Saviour Jesus Christ, in order that it pleases Him, by the consideration and sufferings of His passion, to place her soul in the Kingdom of the Blessed.

The said testatrix wishes and directs, that after death, her body be buried in the cemetery of the church of St. Louis, and that Divine service, and three low masses should be said for the repose of her soul.

The said testatrix wishes and directs that her debts shall be paid, and her wrongs redressed, if there be any.

The said testatrix wishes and directs that the properties which she shall leave after her death shall be managed and gov-
41 erned by Bernard Pratte, esq., residing in this district, as the executor of her will, and to whom she has communicated her last directions, requesting him to be so kind as to manage and govern them according to the intentions he has particularly dictated to her.

The said testatrix declares that she has been married to Pierre Cayoux, in first marriage, and to Joachim Roy, in second marriage; from which said first marriage she had four living children, to wit, Francois Cayoux, Eustache Cayoux, and Louis Cayoux, and Josephte Cayoux, which children, all of them of lawful age, she has acknowledged to have had by her legitimate marriage with the said Pierre Cayoux, her first husband, and acknowledged to have no children born from her second marriage with Joachim Roy.

The said testatrix wishes and directs so, and bequeaths unto Louis Cayoux, in consideration of all the services she has received from him, a bay horse, stamped with the letters R. I., and also a brown colored cow, with her calf, and the largest bed in the house, to be enjoyed by him, with God's and her own blessing.

42 The said testatrix wishes and directs to, and bequeaths unto Veronique Roy, her grand-daughter, aged about sixteen years, legitimate daughter of Joseph Roy and Joseph Cayoux, her lawful father and mother, a cow of a red color, together with her calf, and also a small press which is in the house of the said testatrix; provided, however, that she remains with her father and mother until the day of her marriage, the same to be enjoyed by her, with God's and her own blessing. This is given for the share said testatrix should give to her (Veronique Roy) mother.

The said testatrix wishes and directs that the remainder of the properties she shall leave after her death shall be equally divided between her two other children, Francois Cayoux and Eustache Cayoux, the said children to enjoy the same, and specially not to have any law suit or quarrel against one another.

These presents have been thus made, dictated, and named her testament, which has been read and reread to her by me, the aforesaid notary, in the presence of the aforesaid witnesses, which she said to have well heard, and is the very one she intended to make, revoking all other testaments, codicils, and donations which she might have made before the present one, to which she stands as being her last will and intention.

43 Made and executed in the said house where the said testatrix resides, in the town and district of St. Louis, Territory of Louisiana, the 19th day of August, in the year of our Lord one thousand eight hundred and eight, at seven o'clock in the evening. And the said testatrix, together with the said witnesses and me, the said notary, has made her usual mark the day and year and hour aforesaid.

The word "three" erased, and the words "and Joseph Cayoux" interlined, and also the word "four," approved as good before the signing of the present testament.

his
VERONIQUE + GUITARRE.
mark.

Signed in presence of us:
JH. CHARLEVILLE,
his
LOUIS + DELILLE,
mark.
JOSEPH LABADIE.

M. H. LEDUC, *Notary Public*.

8. *Deed of Francis and Eustache Cayoux to Wm. C. Lane.*

This indenture, made the 1st day of August, in the year of our Lord one thousand eight hundred and twenty-five, between Louis Callou, of the city of St. Louis, in the State of Missouri, and Maria La Lande, his wife, Francis Callou of the same place, and Marie
44 Opin, his wife, Joseph Roi, of the same place, husband of Josette, the sister of said Louis and Francis and Eustache Callou, and Felicite Ortiste, his wife, of the village of Carondelet, in the State aforesaid, of the one part, (the said Louis, Francois, and Eustache, and Josette being the children and heirs-at-law of Veronique Guitard, wife of Pierre Callou, late of St. Louis, aforesaid, dec'd,) and William Carr Lane, of the said city, of the other part, witnesseth: That the said Francois Callou, Louis Callou, Eustache Callou, and Marie La Lande, Marie Orpin, and Felicite Ortise, their respective wives, and the said Joseph Roi, for and in consideration of the sum of sixty dollars, lawful money of the United States, to them in hand paid, the receipt whereof they do hereby acknowledge, and thereof acquit and forever discharge the said William Carr Lane, his heirs, executors, and administrators, by these presents have granted, bargained, and sold, enfeoffed, and released and confirmed, and by these presents do grant, bargain, sell, enfeoff, release, and confirm unto the said William Carr Lane, and to his heirs and assigns, all that messuage, common field lot, and piece of land situated near the city of St. Louis aforesaid, in that part or parcel of land
45 known and called by the name of "Cul-de-sac," and which is bounded north by a common field lot claimed by the legal representatives of Amable Guyon, dec'd; on the south by a common field lot claimed by the legal representatives of Hubert Tabeau; on the east by Auguste Chauteau's mill tract; and on the north by lands claimed by the representatives of the late Charles Gratiot, containing 60 arpens, be the same more or less, being one and one-half arpent wide and forty arpents in depth; which said common field lot or parcel of ground was granted to Cadet Jean Riou and by him possessed and cultivated forty years and more anterior to the date of this indenture, as will appear by reference to the records in the office of the recorder of land titles in St. Louis aforesaid, and which said common field

lot and piece of land was sold and conveyed by said Jean Riou to Fife Baugenore, and was by him sold and conveyed to Joachim Roy, and was by said Joachim Roy, by his last will and testament, dated 28th day of March, A. D. 1789, bequeathed to the aforesaid Veronique Guitard, wife of said Pierre Callou, dec'd, together with all and singular the ways, woods, waters, rights, privileges, and ap-
46 purtenances and hereditaments thereunto belonging, or in *in* any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also all the estate, right, title, and interest, property, claim, and demand, and whatsoever of the then the said Louis Callou and Marie La Lande, his wife, Francois Callou Marie Opin, his wife, Eustache and Felicite Ortise, his wife, and Joseph Roi, in law or equity or otherwise howsoever, of, into or out of the same, to have and to hold the said messuage or tenement and tract of *of* sixty arpents of land in the said "Cul-de-sac," hereditaments and premises hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said Will. Carr Lane, his heirs and assigns, to the only proper use and behoof of the said Will. Carr Lane, his heirs, and assigns forever.

In testimony whereof the said parties to these presents have hereunto set their hands and seals the day and year above written. The words "and Felicite Ortise, his wife," in the 4th line, and the word "years," in the 19th line, being interlined before execution; "Hubert," 15th line, wrote on erasure.

[SEAL.] LOUIS + CALLOU. (his mark)

[SEAL.] FRANCIS + CALLOU. (his mark.)

[SEAL.] MARIA + L. CALLOU. (her mark.)

[SEAL.] MARIE + L. CALLOU. (her mark.)

47 [SEAL.] JOSEPH + ROY. (his mark.)

[SEAL.] FELICITE + CALLOU. (her mark.)

[SEAL.] EUSTACHE + CALLOU. (his mark.)

Signed, sealed, and delivered in presence of—
J. A. WHERRY.
J. V. GARNIER.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it known that on the day of the date hereof, before the subscriber, a justice of the peace within and for the county aforesaid, personally appeared Louis Callou, and Marie L., his wife, Francois

Callou, and Eustache Callou, and Felicite, his wife, and Joseph Roy, whose names are subscribed to the foregoing instrument of writing, and personally known to me as the persons who executed the same, and acknowledged the said instrument of writing to be their act and deed for the purposes therein mentioned. And the said Marie L. Callou and Felicite Callou, wives of the said Louis Francois and Eustache, being by me examined separately and apart from their said husbands, made their acknowledgment that they are well acquainted with the contents of the said deed, and executed the same free from the compulsion or undue influence of their said husbands.

48 In testimony whereof I have hereunto set my hand and affixed my seal, this fifth day of August, 1825.

[SEAL.] J. V. GARNIER, *J. P.*

The words "and Felicite Ortiste, his wife," in the fourth line, "year" in the 18th line, are underlined in the original; "Hubert" wrote where some other word had been erased, 15th line of this record.

Recorded 5th August, 1825.

ARCHIBALD GAMBLE, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify the foregoing to be a true and correct copy of a deed from L. Callou *et al.* to Wm. Carr Lane, and also of the certificate of acknowledgment, and of the date of recording thereof, as fully as the same remains of record in my office in b'k M, 349.

Witness my hand and official seal, this 6th day of January, 1857.

[SEAL.] C. KEEMLE, *Recorder.*

By BENJ. B. HICKS, *Dep'y.*

49 9. Stipulation of counsel as to pedigree of the Cayoux:

CLARK
vs.
HAMMERLE & MCREE. } In the land court.

In this cause it is admitted that Veronique Guitard married one Cailloux, and had four children by that marriage, viz: Francis, Eustache, Louis, and Josette; that said Cailloux died, and his widow subsequently married Joachim Roy; that said Roy died, leaving his widow surviving him, and no children by his marriage with her.

C. GIBSON, *P. D.*

Further agreement as to facts.

10. It was admitted that all the title held by Lane was vested in the plaintiff, and that defendants were in possession of the premises at the time of the entry alleged in the petition.

11. Confirmation certificate, dated (24) M'ch, 1857:

Confirmation certificate, No. 137.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 24th March, 1857.

It is hereby certified that, under the first section of the act of Congress approved on the 13th June, 1812, entitled "An act
50 making further provision for settling the claims to land in the Territory of Missouri," and the two acts of Congress of the 26th May, 1824, and 27th January, 1831, supplemental or having reference thereto; (St. at Large, vol. 2, p. 748; v. 4, p. 65, 435,) the legal representatives of Joaquim Roy have been confirmed in their claim to a lot of ground of one and a half by about thirty arpents, situated in the Cul-de-sac common field of St. Louis.

It is further certified that the same has been lawfully surveyed in conformity with said confirmation, in the said Cul-de-sac common field of St. Louis, being in township 45 north of the base line, and range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey, numbered 3,307, authenticated and returned on the 20th March, 1857, to this office, by John Loughborough, surveyor general for the district of Illinois and Missouri. Beginning at A on the plat, on the western line of survey No. 363, for Auguste Chouteau, and running thence S. 14° 15′ W., 1 chain 35 links to Chouteau's corner;
51 thence with the southern line of Chouteau, S. 75° E., 2 chains 34 links to the N. W. corner of survey No. 3,182 for Motard; thence with Motard's western line, S. 17° 51′ W., 3 chains 3 links, to the S. W. corner of this survey; thence with the southern line of this survey N. 74° W., 87 chains 45 links to the S. W. corner of this survey, on the eastern line of survey No. 2,037 for Gratiot; thence with the western line of this survey, along Gratiot's line, N. 9° E., 4 chains 38½ links to the N. W. corner of this survey; and thence with the northern line of this survey S. 74° E., 86 chains to the beginning, containing thirty-eight acres and twenty-six hundredths of an acre.

In testimony whereof I have hereunto set my name, on the day and in the year above written.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

(Recorded at p. 134, of book of confirmation certificates.)

to confirmation certificate.

This document was objected to by the defendants as incompetent; it was issued after the commencement of this case; recorder had no authority at the time to issue same. But the court overruled these objections, and the defendants excepted thereto at the time.

Mosberger's map.

12. The map known as "Mosberger's map" was read by consent and the parties agree that any true copy thereof may be used in the Supreme Court.

Hammerle in possession.

13. It was admitted that Hammerle was at the commencement of the suit, and is now, in possession of the premises in dispute.

Value of rents, &c., proven.

14. It was proven that the monthly value of the rents and profits (and damages) of said premises were as great as the amount fixed by the jury.

Defendant's evidence.

The defendants offered in evidence the following documents:

1. *Letter of W. C. Lane.*

ST. LOUIS, *June 20th*, '40.

To Gen'l Milburn, Surveyor Public Lands, &c:

SIR: On behalf of the legal representatives of Joachim Roy, who claim and have the actual possession of a lot in the St. Louis Cul-de-sac common field, in right of said Roi, I respectfully call
53 your attention to Mr. Brown's late survey of this lot, and request that an error in the survey may be rectified. As far as Brown's survey is made it is admitted to be correct, but we allege that it is erroneous in not extending some 10 arpents further eastward. No blame is attributed to Mr. Brown, but error is imputed to the recorder's transcript of the extent and boundaries of this lot, as furnished to your office. Of this error, you will please judge for yourself, after considering all the proof and allegations which I proceed to produce.

The representatives of Roi claim a lot one and a half by forty arpens in the cul-de-sac adjoining Locompte's reps. on the west, and Tabeau's on the south. A common field lot of this size, and thus bounded, was claimed by Roy, in 1789, when he died. It is alleged that the claim to the lot originated in Cadet Jean Riou, one of the very first settlers in the country; that he transferred his right to it, according to the maps of that early day, to Fifi Bougenon, from whom it passed to Joachim Roy. I refer you, first, to the accompanying transcript of testimony taken, according to law, before the recorder of land titles, in the year 1825.—(See Minute Book No. 2, p. 49, 50, 116, and 131.) Secondly, to the last will of Joachim
54 Roi, dated March 28th, 1789, and duly recorded in the proper office. Thirdly, to the last will of Veronique Guitard, (the devisee of Joachim Roi,) dated August 16th, 1806, also recorded in the proper office. Fourthly, to a deed for the lot in question to the undersigned from Francois and Eustache Cayeux, devisees, and from the other heirs-at-law of Veronique Guitard, duly recorded Aug. 5th, 1825, (Book M, p. 328.) Fifthly, to a deed for the same lot to the undersigned from Fifi Bougenon, duly recorded Aug. 5th, 1825,

(book M, p. 352.) Sixthly, to the State and county tax lists every year from the year 1825 until 1829, which will show that this lot, with a front of 1½ arpents by a depth of 40, making a lot of 60 arpents with the boundaries above mentioned, was duly assessed as the property of the undersigned, (as Roi's leg. reps.,) with the above-mentioned boundaries, and that the taxes were paid by the undersigned.

Such a mass of recorded testimony, commencing in 1789 and coming down to 1839, is surely due notice to all concerned of the existence of this claim; and as for the proof of ownership, quantity and boundaries, it was duly made at the appointed time according
55 to law. I again refer you to the recorder's minutes, book No. 2, pp. 49, 50, 116, and 132.

All this testimony goes to establish the fact that the lot in question ought to be surveyed 40 arpents in depth instead of 30. I say all the testimony, for I assert, of my own certain knowledge, that the proof taken before the recorder, No. 2, p. 116, called for 40 arpents instead of about thirty, before the record was altered.

I have now in my possession two copies of these entries upon the recorder's minutes, made before the erasure of the claimant's name, and the word "forty," and of the subsequent interlineations of another name and of the word "thirty."

I deem it proper to call your attention to the depth of Tabeau's lot, which adjoined Roi's lot on the south, and was 40 arpens in depth, and the proof submitted to the recorder in the case of Calve's lot, which adjoins Tabeau. The evidence in Tabeau's lot is * * * *

I might also refer to lot of Lecompt, adjoining Roi on the N., and that of Debreuil, next in order, both long since duly surveyed.

In these two cases, I have been informed that, as the claim called for 40 arpens, and 30 only was to be found between Gratiot and Chouteau's previous survey, and increased breadth was given,
56 so as to make up the superficial contents; but my information may not be correct.

Now, in the absence of all proof, if Tabeau's and Calve's adjoining lots are 40 arps. deep, will any one suppose that it was not also intended to make Roi's lot of the same depth? Any other supposition is an absurdity. But the proof that the lot was 40 arpens is ample at p. 49, 50, of the recorder's minutes; and I am certain that your sound sagacity and sense of justice will not allow this positive testimony to be overruled by the questionable testimony at p. 116.

I therefore respectfully ask for myself and Charles Coutts, who holds title under me, that the survey of the lot of Joachim Roi may be extended by your order eastward, so as to make the lot full 40 arpens in depth, without interfering with the survey of Chouteau's mill tract.

Your obedient servant,
(Signed) WM. CARR LANE.

OFFICE OF THE SURVEYOR GEN'L FOR ILLS. & MO.,
St. Louis, Jan'y 20th, 1857.

The above is a correct copy of said letter on file in this office.

JNO. LOUGHBOROUGH,
Surveyor Gen'l.

Which the court admitted in evidence.

57 *Certificate of the claim of Roy.*

2. Certificate of the claim of J. Roy, p. 49 of the registry of certificates of confirmation in the recorder's office. This the court admitted in evidence.

Testimony relating to town and village lots, out lots, and common fields in adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondolet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26th, 1824.

THEODORE HUNT,
Recorder Land Titles.

Joachim Roy's legal representatives claim a lot in the Cul-de-sac, near the town of St. Louis, containing one arpen and a half in front, by about forty in depth, bounded N. by the field lot formerly owned by Madame Lecompte; east, by the claim of Widow Camp leg. reps.; S., by a field lot formerly owned by Tabeau; and W., by land unknown, near to Gratiot's.

58 *Registry of certificates of confirmation on town lots, out lots, and common field lots, issued by the recorder of land titles.*

In whose name issued.	No of cert.	Date.	Situation.	Remarks.	Quantity.	
					Ft	Arpens
Joachim Roy, legal representatives.	.....	1825, July 30	Common field lot, cul-de-sac, near Saint Louis.	Bounded north by the field lot claimed by Amable Guyon's legal representatives; south, by the field lot claimed by Rene Tabeau's legal representatives; east, by Auguste Chouteau mill tract; and west, by the claim of Charles Gratiot.		1½fr'nt by ab't thirty deep.

3. The defendants then offered the same claim from said page 49, and the depositions of Francis Cayoux and Eustache Cayoux thereto annexed, as follows:

(For "same claim," see above claim.—CL'K.)

Deposition of Fr. Cayoux.

Francois Cayoux, being duly sworn, says, that he knows the field lot claimed, and that this deponent, forty years ago, with Joachim Roy, cultivated this field lot, and continued to cultivate the same with said Roy until the fence was taken down some twenty-five or twenty-six years ago. This deponent says that his mother, after the death of his father, married Joachim Roy, and in that way, living with Roy, he became acquainted with this field lot. He has no interest in this claim whatever.

his
FRANCOIS + CAILLOU.
mark.

Sworn to before me, July 7, 1825.
THEODORE HUNT, *Recorder L. T.*

59 *Deposition of Eustache C.*

Eustache Caillou, being duly sworn, says that he knows the field lot claimed, and that upwards of thirty years this lot was owned and cultivated by Joachim Roy, who cultivated the same until the fence was taken down. And this deponent further says, he has no interest whatever in this field lot, neither directly or indirectly.

his
EUSTACHE × CAILLOU.
mark.

Sworn to before me, July 7, 1825.
THEODORE HUNT,
Recorder L. T.

See Hunt's minutes, b'k No. 2, pp. 49 and 50.

Objected to and excluded.

The plaintiff objected to the admission of said depositions as incompetent; and the court sustained said objections, and excluded the same.

Exceptions.

To which the defendants at the time excepted.

4. The claim of Amable Guion was then read as follows:

Testimony relating to town and village lots, out lots, and common field lots, in, adjoining, or belonging to, the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Roberts, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress, passed May 26, 1824.

THEODORE HUNT,
Recorder L. T.

Claim of Amable Guyon.

60 Amable Guyon, or Veuve Lecompte, legal representatives, claim a field lot in Cul-de-sac, near the town of St. Louis, containing two arpents in front by about thirty in depth, bounded north by a field lot formerly owned by Verdieu, south by Cadet Jean Riou, east by the mill tract of Auguste Chouteau, and west by the claim of Charles Gratiot.

Baptiste Riviere dit Bacane, being duly sworn, says he knows the field lot claimed, and that upwards of 40 years ago this field lot was owned and cultivated by Amable Guyon, and that it was constantly cultivated until the common field fence was taken down, as this deponent believes, by some of the family.

his
BAPTISTE × RIVIERE.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder L. T.

Date of deed to Chouteau from Guillaume Hebert, Oct. 23, 1805.

Rene Dodier, having had the deposition above of Baptiste Riviere read to him, and being duly sworn, says, of his knowledge, he knows it to be true.

his
RENE × DODIER.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder L. T.

61 Rene Paul, being duly sworn, says he has translated and read to Baptiste Riviere and Rene Dodier the above depositions, and that they said they were true before the signing of them. Furthermore, this deponent says he has been at divers times on the land before described, and shown to him by the aforesaid Bacane and Dodier, and that it bear evident marks of cultivation.

RENE PAUL.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder of L. T.

See Hunt's minutes, b'k 1, p. 1, and b'k 2, p. 115.

[For certificates and confirmation of the aforegoing claim of Amable Guyon, see pp. 55 and 56 of this (land court) transcript: clerk (of land court,) pp. 81 of this transcript: clerk supreme c't.]

5. The claim of B. Tabeau was also read:

Tabeau's claim.

Testimony relating to town and village lots, out lots, and common field lots, in, adjoining, or belonging to, the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prarie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress, passed May 26, 1824.

THEODORE HUNT,
Recorder of L. T.

Hunt's minutes, b'k 1, p. 1.

62 Hubert dit Berry Tabeau's legal representatives claim a field lot in the Cul-de-sac, near St. Louis, containing one arpen in front by about forty arpens in depth, bounded north by the field lot claimed by Jean Riou's legal rep'ves, south by the field lot claimed by Calve's legal reps., east by vacant, and west by Gratiot's claim.

Baptiste Riviere, being duly sworn, says that he knows the field lot claimed, and that upwards of forty years ago this field lot was possessed and cultivated by Hubert dit Berry Tabeau, from that time until the common field fence was taken down.

his
BAPTISTE × RIVIERE.
mark.

Sworn to before me, Aug. 10, 1825.

THEODORE HUNT,
Recorder L. T.

Rene Dodier, being duly sworn, says he knows the field lot claimed by Hubert dit Berry Tabeau, and that forty years ago this field lot was possessed and cultivated by said Tabeau, and that he cultivated this same field lot from that time until the common field fence was taken down.

his
RENE × DODIER.
mark.

Sworn to before me, Aug. 10, 1825.

THEODORE HUNT,
Recorder L. T.

Rene Paul, being duly sworn, says he has truly translated and read the testimony of Baptiste Riviere and Rene Dodier to each of
63 them, before they signed the same, and that they said it was true.

R. PAUL.

Sworn to before me, Aug. 10, 1825.

THEODORE HUNT,
Recorder L. T.

See Hunt's minutes, b'k 2, p. 131.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 13th September.

I certify that the foregoing is correctly transcribed from the books on file in this office, containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles in the State of Missouri, pursuant to the first section of the act of Congress of the 20th May, 1824, supplementary to the act of 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

Registry of certificates of confirmation on town lots, out lots, and common field lots, issued by the recorder of land titles.

In whose name issued.	Date.	Situation.	Remarks.	Quantity in arpens.
Hubert dit Berry Tabeau, leg. reps.	Aug. 10, 1825.	Cul de Sac, near St. Louis.	Bounded north by the field lot claimed by Jean Riou's legal representatives, south by the field lot claimed by Calve's legal representatives; east by vacant land, and west by Gratiot's claim.	One front by about forty deep.

64 OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 10th Sept., 1856.

I certify that the above is correctly extracted from the list on file in this office, which is prescribed by the third section of the act of Congress of the 26th May, 1824, supplementary to the act of 13th June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri."

ADOLPH RENARD,
U. S. Recorder of L. T. in the State of Mo.

6. Claim of Cottard was then read, (page one.)

Cottard's claim.

To the recorder of land titles for the Territory of Louisiana, take notice:

Francois Cottard claims 40 arpents of land situated in the district and township of St. Louis, by virtue of a concession granted

to him for the same by the lieut. governor, Don Zenon Trudeau, the 3d of November, 1796.

St. Louis, 27th June, 1808.

For F's Cottard, LOUIS LABEAUME.

B'k D, p. 309.

Mr. Dn. Zenon Trudeau, capitaine au regiment fix de la Louisiane, lieut. gouv. et commdt. en chef la partie occidentale des Illinois supplie humblement Francois Cottard, et a l'honneur de vous
65 representer, qu' ayant achete de Francois Roy an arpent de terre de large, sur quarante arpents profondeur, lequel en jouissant comme l'ayant acquis de Charles Zayon; et comme les dits vendeurs en ont joui depuis un tres long temps, sans avoir aucun titre de propriete (c' est) pourquoi le suppliant reclame votre bonte pour, qu'il vous plaise lui en accorder la concession, a fin qu'il puisse s'en assurer la propriete, par un proces verbal d'arpent agi lorsque ses voisens le requierornt unaninement avec lui; et que par ce, moyen il puisse avec certitude cultiver, et faire les travaux convenables et necessaire sur la susdite concession; ce considere, il vous plaise accorder au suppliant la concession du susdit arpent de terre de large, sur quarante arpens de profondeur, prenant au bout des troit-quarre des terres de la devanture dece village, prenant au lieu nomme le cul-de-sac, en allant quarante arpents en profondeur aux terres concedesses [de la devanture de ce village prenant au lieu nomme le cul-de-sac en allant quarante arpents en profondeur aux terres concedees] joignant des dieux bouts aux terres que le Sieur Motard fait valver aujvurd hui. Et le suppliant se conformera au Rhumb de vent que l'arpenteur jugua le plus convenables pour le bien public. Il ne cavera d'addresses des voux au ceil en reconnaisance pour votre conservation.

66 A St. Louis, ce 2 9bre, 1796.

COTTARD.

St. Louis, *ce* 3 *Nov.*, 1796.

L'arpenteur de cette jurisdiction, losque il en sera requis, mettra le demandant en regle pour sa propriete, afin de lui en delivrer la concession enforme; pouvant jouir des ce jour de son acquisition comme en ont joui les proprietaires avant lui.

ZENON TRUDEAU.

Book D., p. 313.

Saturday, *Nov.* 2, 1811.

Board met. Present: John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

Francis Cottard, claiming 40 arpens of land situate near the town of St. Louis, produces a concession from Zenon Trudeau, dated (p. 2) 3 November, 1796.

It is the opinion of the board that this claim ought not to be confirmed.

Board adjourned till Thursday next, 9 o'clock a. m.

JOHN B. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See b'k No. 5 of minutes, pp. 394 and 397.

RECORDER'S OFFICE, *St. Louis*, 8 *Dec.*, 1848.

I certify that the foregoing is correctly copied from the books of this office, at the pages therein referred to.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

67 A.

Report on town lots and out lots within the Territory of Missouri, selected by Frederick Bates, recorder of land titles, from the books of the late board of commissioners, for confirmation under the act of Congress of 13th June, 1812.

St. Louis lots.

439. Francis Cottard, 40 arpents of land near the town; 5, p. 397. Com. from Z. Trudeau.

RECORDER'S OFFICE, *St. Louis*, 22*d Oct.*, 1858.

I certify that the above is correctly transcribed from p. 43, in book No. 3, being one of the five small books in this office, with the following indorsement on the first, and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: "These five small books are originals in the proper handwriting of the undersigned, being his decisions on land claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by government.

"St. Louis, Nov. 1, 1815.

"FREDERICK BATES,
Recorder Land Titles."

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

68 RECORDER'S OFFICE, *St. Louis*, 26 *Oct.*, 1858.

I certify that the within, on pp. "one" and "two," is, with the attached paper marked "A," a full and correct transcript from the books, records, files, and documents in this office of the claim of Francis Cottard to 40 arpents of land near the town of St. Louis.

ADOLPH RENARD,
U. S. Recorder of Land T. in the State of Mo.

Translation of the concession to Cottard.

To Don Zenon Trudeau, captain of the stationary regiment of Louisiana, lieut. governor and commander in chief of the western part of Illinois:

Francis Cottard humbly supplicates, and has the honor to represent to you that, having bought an arpent of ground in width by forty arpens in depth from Francois Roy, who had enjoyed the same as having acquired it from Charles Tayon; and inasmuch as the said vendors had possessed it for a very long time without having any title of property: Therefore the petitioner claims from your goodness that you be pleased to grant to him the concession thereof in order
69 that he may insure to himself the ownership of it, by a process verbal of survey, when his neighbors unanimously require it with him; that by this means he may, with security, cultivate the said concession, and make thereon the suitable and necessary works; which being considered, be pleased to grant to the petitioner to the concession of the aforesaid arpent of land in width by forty arpents in depth, taking at the end of the trait-a-quarre of the lands in front of this village, taking at the place called the Cul-de-sac, and going forty arpents in depth to the conceded lands adjoining on the two sides the lands which Mr. Motard cultivates now. And the petitioner shall conform to the (rhumb de vent) point of the compass which the surveyor shall judge the most proper for the public good.

In his gratitude, he shall never cease to pray heaven for your preservation.

In St. Louis, this 2 Nov., 1796.

COTTARD.

The surveyor of this jurisdiction, when required, will put the petitioner in possession of his property, in order that the concession in form may be delivered to him, he (the petitioner) being allowed from this day to enjoy his acquisition as it has been enjoyed by the owners before him.

ZENON TRUDEAU.

70 (A.)

"Trait-quarre:" "Trait," line, stroke; "en trait de plume," a stroke of the pen; "quarre," square. The meaning of "trait-quarre" seems, then, to be one of the lines which make a figure square. I think that, in the present instance, it is intended for the west front line of the common fields of St. Louis, in contradistinction to the side lines of those fields.

ST. LOUIS, 8 *Dec.*, 1848.

I have made the above translation as literal as possible.

ADOLPHE RENARD.

7. Claim and confirmation of Madame Camp was then read.

Claim.

The representatives of Widow Camp claim 200 arpents of land, situate in the district of St. Louis, under the second section of the act of Congress.

[Here follows diagram, marked page 70.]

I certify that the above plat represents 200 arpens, French measure, situate in the district of St. Louis, Louisiana Territory,
71 and surveyed at the request of the proprietor, who claims the same in virtue of different purchases made from divers individuals.

Given under my hand, at St. Louis, the 27 Febr., 1806.

JAMES MACKAY.

Received for record, St. Louis, Feb. 27, 1806.—See record b'k B, p. 252.

ANTOINE SOULARD, *S. G. L.*

SEPTEMBER 17TH.

Conf. book 4, p. 406.

The representatives of Widow Ann Camp, claiming a tract of about 200 arpens of land, situate in the Cul-de-sac, district of St. Louis.

Jean B'te Provenchere being duly sworn, says that the said Ann Camp cultivated the said land about 15 years ago; that about 5 or 6 years after she built a water-mill, which was carried away by the water; that she again rebuilt the same, which was afterwards destroyed by fire; that the said tract was always considered as her property, but he does not know whether she had a concession for the same.

The board rejects this claim.—See board minutes book No. 2, p. 33.

TUESDAY, *Oct.* 25, 1808.

Board met.

Present: The Hon. J. B. C. Lucas, Clement B. Penrose, Frederick Bates.

72 Book No. 2, p. 33.

The representatives of the Widow Camp, claiming 200 arpens of land, situate Cul-de-sac, district of St. Louis.

James Richardson, sworn, says that 19 years ago he knows of the Widow Camp having cultivated said land, and for 6 or 7 years afterwards, and also knows of a mill being built on said place.

Charles Gratiot sworn, says: That for above 15 years past the said land has always been considered the property of the Widow Camp.—(See board minutes No. 3, pp. 322, 324, and 326.)

Laid over for decision.

Board adjourned.

(Sig.) CLEMENT B. PENROSE.
FREDERICK BATES.

MONDAY, *June* 25, 1810.

Board met.

Present: John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Widow Camp's representatives claiming 200 arpens of land.—(See book 2, p. 33; b'k 3, p. 324.)

The board grant to the legal representatives of Widow Camp the above tract of land, provided it does not exceed 200 arpens, under the second section of an act of Congress, entitled "An act respecting claims to land," and passed the 3d March, 1807, and order that the same be surveyed conformably to the possession.

73 Board adjourned until to-morrow, at 3 o'clock p. m.—(See board minutes b'k No. 4, pp. 404, 406, and 407.)

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

MONDAY, *June* 10*th*, 1811.

Board met.

Present: John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Cert. No. 903, b'k 4, 406.

Widow Camp, representatives of, survey at expense of claimant.

Board adjourned till to-morrow, at 8 o'clock a. m.

JNO. B. C. LUCAS.
CLEMENT B. PENROSE.
FRED'K BATES.

RECORDER'S OFFICE,
St. Louis, 23*d June*, 1857.

The foregoing is correctly copied from the records and books in this office.

Page 74.

8. Plat of Chouteau's mill tract was then read.

[Here follows map, marked page 74.]

75 date du 17 Fevrier de la meme annee, du decret de Mons'r le Lut. Geu'r Dn. Charles Dehault Delassus, du 18 du meme mois meme annee, a laquelle est jointe le plan figuratif de la dite

terre et toutes les pieces citees dans la dite requete numerotees, lesquelles j'ai remises a l'interresse avec le certificat d'arpentage que j'ai expedie le 23 d'Aout, 1803.

OFFICE OF THE SURVEYOR GEN'L FOR ILLS. AND MO.,
St. Louis, Jan'y 22, '57.

The above plat and annotation is correctly copied from p. 19 of "registre d'arpentage" on file in this office.

JNO. LOUGHBOROUGH,
Surveyor Gen'l.

Bill of ex. to exclusion of rept. of surveyor gen'l.

9. The defendants then offered the following report of the surveyor general, which was objected to by plaintiffs as incompetent, and was excluded by the court; to which defendants at the time excepted. Said report is dated August 19th, 1852.

The parties agree that the certified copy of said report, now in the possession of defendants' counsel, may be used in the supreme court as if the same was incorporated in this bill of exceptions.

76 10. Agreement of counsel.

Agreement of counsel as to location of New M. c. 150 *and succession of title.*

It is admitted that New Madrid certificate No. 150 was located so as to cover the premises in dispute, on the 16th day of June, 1818, by Christian Wilt; that the same has been surveyed by the United States (survey No. 2,498) on the day of , 1818, as represented on the connected plat given in evidence by the plaintiff; and that the title of said Wilt was sold by judicial process to one Hertzog, and that the title so sold has been conveyed to the defendants; and that a patent certificate has been granted to James Y. O'Carrol, who had conveyed to Wilt.

The above stipulation and admission is made for the purposes of the present trial only, and is not to be used (except by further consent) in any future trial between the parties to this suit.

KRUM & HARDING, *for Pl'ff.*
C. GIBSON, *P. D.*

Adolph Renard's testimony.

Adolph Renard, for defendants, testified:

That he had been in the recorder's office since 1836, and had
77 been recorder since 1847. He knew the handwriting of Bates, and Hunt's, (both recorders of land titles.) The annotation in the margin of the Guion claim, (hereinafter copied,) being the words "In Choutean's mill tract," are in Hunt's handwriting; the handwriting of the words "In Choutean's mill tract" is the same as that in which the body of the claim was written. He believed the entries on p. 49, of the Roy claim, and those on p. 116, of the same

record, mutually referring to each other as the same claim, was in Hunt's handwriting.

The defendant then asked the witness the following question:

"Have the annotations always, since you were recorder, been considered by you and in your office, as part of the record in these matters, and have they been so treated by the office?"

The plaintiff objected to this testimony because it was incompetent; which objection the court sustained, and excluded the same, to which the defendants at the time excepted.

Witness then testified: That a portion of the Cul-de-sac common field was embraced within the western part of the Chouteau mill tract as at present surveyed and claimed by the representatives of Auguste Chouteau, as witness understood from records in his office; knew handwriting of his own knowledge in the matter.

Cross-examination:

78 On cross-examination, he said: That he came to St. Louis in 1836. He was not a surveyor, and had had nothing to do with surveying the Cul-de-sac lots. Some of these lots were located before he came to St. Louis, and some were not then located. All but Jacque L'Abbe's were located before I became recorder. He was in the recorder's office in 1836. The out boundary of the Cul-de-sac was never run. He knew the proper location of the Cul-de-sac from his long experience in the surveyor general's office. Never was on the Cul-de-sac to notice the lines, and cannot point them out. He only desired to say that he never saw a plat of the out boundary in the surveyor general's office. Some of the Cul-de-sac lots were surveyed between Chouteau's mill tract and Gratiot's league. He never saw Roy's tract, and could not identify any of the Cul-de-sac lots, and that his information of the subject was derived from plats and records in his office. I never saw Hunt write, and only know his handwriting from records in my office.

The defendants then offered in evidence the claim of Guyon, with the annotations, and also, the claim of Roy with the annotations.

79 Testimony relating to town and village lots, out, lots and common field lots, in adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondolet, St. Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26, 1824.

THEODORE HUNT, *Recorder, L. T.*

Amable Guion, or Veuve Lecompte, legal representatives, claim a field lot in Cul-de-sac near the town of St. Louis, containing two arpens in front by about thirty in depth; bounded north by a field lot formerly owned by Verdun; south by Cadet Jean Riou; east by the mill tract of Auguste Chouteau; and west by the claim of Charles Gratiot.

In Chouteau mill tract.

Baptiste Riviere dit Bacane, being duly sworn, says he knows the field lot claimed, and that upwards of forty years ago the field lot was owned and cultivated by Amable Guyon, and that it was constantly cultivated until the common field fence was taken down, as this deponent believes, by some of the family.

his
BAPTISTE + RIVIERE.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder Land Titles.

80 Date of deed to Chouteau from Guillaume Hebert, Oct. 23, 1805.

Rene Dodier, having had the deposition above of Baptiste Riviere read to him, and being duly sworn, says, of his knowledge he knows it to be true.

his
RENE + DODIER.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder of Land Titles.

Rene Paul, being duly sworn, says he has translated and read to Bte. Riviere and Rene Dodier the above depositions, and that they were true, before the signing of them; furthermore, this deponent says, he has been at divers times on the land before described, and shown to him by the aforesaid Bacane and Dodier, and that it bore evident marks of cultivation.

RENE PAUL.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder of L. T.

See Hunt's minutes, book 1, p. 1, and bk. 2, p. 115.

RECORDER'S OFFICE, *St. Louis*, 23 *Jan.*, 1857.

The above is correctly copied from the books in this office containing the minutes of the testimony taken by the recorder of land titles, pursuant to the first section of the act of Congress of 26 May, 1824, supplemental to the act of 13th June, 1812.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in Missouri.

81 *Registry of certificates of confirmation of town lots, out lots, and common field lots, issued by the recorder of land titles.*

In whose name issued.	No. of cert.	Date.	Situation.	Remarks.	Quantity.
					Arps.
Amable Guyon, or Veuve Lecompte's representatives.	------	1825. July 30.	Cul-de-Sac, near town of St. Louis.	Bounded N. by a field lot, formerly owned by Vendun; S. by Cadet Jean Riou; E. by the mill tract of August E. Chouteau, and west by the claim of Chas. Gratiot.	Two front by about thirty deep.

RECORDER'S OFFICE,
St. Louis, Jan. 23, 1857.

The above is correctly copied from the original list on file in this office prescribed by the third section of the act of Congress of 26 May, 1824, supplemental to the act of 13 June, 1812.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in Missouri.

Roy's claim, with annotations, &c.

Testimony relating to town and village lots, out lots, and common field lots in, adjoining, or belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villa a Robert, Carondolet, St. Genevieve, New Madrid, New Bour-
82 bon, Little Prairie, and Mine a Burton, in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26, 1824.

THEODORE HUNT,
Recorder of Land Titles.

Joachim Roy's legal representatives claim a lot in the Cul-de-sac, near the town of St. Louis, containing one arpen and a half in front by about forty in depth; bounded north by the field lot formerly owned by Madame Lacompte; east by the claim of Widow Camp's legal rep's.; south by a field lot formerly owned by Tabot, and west by land unknown, near to Gratiot's.

Michael Marly, being duly sworn, says that he knows the field lot claimed, and that thirty years ago this lot was owned and cultivated by Joachim Roy, who that year raised three hundred bushels of corn (that year) on this field lot; and to the knowledge of this deponent this field lot was cultivated by Roy until the common field fence was taken down, about 28 years ago.

his
MICHAEL + MARLY.
mark.

Sworn to before me, July 7, 1825.

THEODORE HUNT,
Recorder L. T.

(See page 116, the same field lot.)

Joseph Roy, being duly sworn, says that he knows the field
83 lot claimed, and that thirty-five years ago this deponent cut wheat off this common field lot; that belonged at that time to Joachim Roy, and said Roy cultivated the same until the common field fence was taken down; this deponent is the son-in-law and cousin of said Joachim Roy.

his
JOSEPH + ROY.
mark.

Sworn to before me, July 7, 1825.

THEODORE HUNT,
Recorder L. T.

Francois Caillou, being duly sworn, says that he knows the field lot claimed, and that this deponent, forty years ago with Joachim Roy, cultivated this field lot, and continued to cultivate the same with said Roy until the fence was taken down, about 25 or 26 years ago. This deponent says that his mother, after the death of his father, married Joachim Roy, and in that way living with Roy he became acquainted with this field lot. He has no interest in this claim whatever.

his
FRANCIS + CAILLOU.
mark.

Sworn to before me, July 7, 1825.

THEODORE HUNT,
Recorder L. T.

Eustace Caillou, being duly sworn, says that he knows the field lot claimed, and that upwards of thirty years this lot was owned and cultivated by Joachim Roy, who cultivated the same until the fence was taken down; and this deponent further says he has no interest
84 in this field lot, neither directly nor indirectly.

his
EUSTACE + CAILLOU.
mark.

Sworn to before me, July 7, 1825.

THEODORE HUNT,
Recorder L. T.

(See Hunt's minutes, bk. No. 2, pp. 49 and 50.)

Joachim Roy's legal representatives claiming a common field lot in the Cul-de-sac, containing one arpent and a half in front by about thirty in depth; bounded north by the field lot claimed by Amable Guyon's legal rep's; south by the field lot claimed by Bere Tabeau's legal rep's; east by August Chauteau's mill tract, and west by Charles Gratiot.

Baptiste Riviere, being duly sworn, says he knows the field lot claimed, and that upward of forty years ago this field lot was owned and cultivated by Cadet Jean Riou, who cultivated the same until he

died, and after that Fefe Beaugenau cultivated the same until it became the property of Joachim Roy, who owned and cultivated the same until the common field fence was taken down.

his
BAPTISTE + RIVIERE.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder L. T.

(J. Roy's leg. rep's.)

Rene Dodier, being duly sworn, says he has had the testimony above written translated and read to him, and of his knowledge he knows it to be true.

his
85 RENE × DODIER.
mark.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder L. T.

Rene Paul, being duly sworn, says that he has truly translated and read to Baptiste Riviere and Rune Dodier the depositions above written before they signed the same, and that they said the whole was true. This deponent further says that he, in company with the above-named Riviere and Dodier, was on the described field lot a few days ago, and that it showed evident marks of former cultivation.

R. PAUL.

Sworn to before me, July 30, 1825.

THEODORE HUNT,
Recorder L. T.

(See Hunt's minutes, b'k No. 2, p. 116.)
(See page 49.)

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, Jan. 12, 1857.

I certify that the foregoing is correctly transcribed from the books in this office, containing the minutes of the testimony taken by Theodore Hunt, recorder of land titles, under the first section of the act of Congress of 26 May, 1824, supplemental to the act of 13 June, 1812, making further provision for settling the claims to land in the Territory of Missouri.

ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Mo.

86 *Registry of certificates of confirmation on town lots, out lots, and common field lots, issued by the recorder of land titles.*

In whose name issued.	No. of cert.	Date.	Situation.	Remarks.	Quantity.
Joachim Roy's legal representatives.	.....	1825 July 30.	Common field lot, Cul-de-sac, near St. Louis.	Bounded north by the field lot claimed by Amable Guyon's legal representatives; south by field lot claimed by Rene Tabeau's legal representatives; east by August Chauteau mill tract; and west by the claim of Charles Gratiot.	*Arps.* One and one-half front by about thirty deep.

OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, 12 *Jan.*, 1857.

The above is correctly transcribed from the original list in this office, prescribed by the 3d section of the act of 26 May, 1824, supplementary to the act of 13 June, 1812, making further provision for settling the claims to land in the Territory of Missouri; and the
87 above is the only entry in the said list of the claim of said Roy's representatives to a lot in the Cul-de-sac common field of St. Louis; and the interlineations and insertions appear upon said record exactly as they appear on the above transcript.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Mo.

Bill of exceptions.

All of which the court excluded; and the defendants excepted thereto at the time.

The said claims having been already admitted without the annotations and marginal references.

Pourcelli's testimony.

John B. Pourcelli testified as follows:

That he was 73 years old, and was born in St. Louis. That he knew the the Cul-de-sac; they commence at Camp Spring. The last lot on the south was Motard; the lot on the north was Marie Fontaine's. The mill creek run through the Cul-de-sac as far as Rock Spring, then turned north. The government was changed in 1803. When he knew the Cul-de-sac, it was not in the Chouteau mill tract; it was west of the mill tract. The Cul-de-sac was all cultivated. There was no cultivation in the Cul-de-sac further than Rock Spring.

The cultivation in the Cul-de-sac ceased when the common
88 field fence fell down, which was 5 or 6 years before the change of government The nearest cultivation in the Cul-de-sac was south of Camp Spring. He never knew Roy. Knew Mrs. Cayoux, Roy's widow; she had children. He was young when J. Roy died. His widow died long ago; cannot say how long. He was then young; she died more than forty years ago. The cultivation in the

Cul-de-sac was not west of the Rock Spring. The furthermost ground cultivated in the Cul-de-sac was just at the foot of the hill south of Rock Spring. West of the Cul-de-sac was timbered land, rolling and broken.

Cross-ex:

The same witness on cross-examination testified:

That he had lived in Carondelet since 1820; left St. Louis in 1820 to live in Carondelet; was not very familiar with land in St. Louis since 1820. He was a laborer here and there before the change of government. Cul-de-sac was then all occupied. There was but one fence; one grand parc (field.) After the common field fence fell down, the inhabitants of the Prairie des Noyers made a field. The Prairie des Noyers was more to the west than the Cul-de-sac. He worked in the Praire des Noyers. The southwest corner was near A. Gam-
89 ble's old place. He knew Paul Guitard; he cultivated in Prairie des Noyers. He knew Jacques Labbe. He had no knowledge himself, but his father said Labbe had a lot in the Cul-de-sac. He never knew Calve or his son. He knew Mrs. Dubreuil. He did not know that she cultivated a field in Cul-de-sac. The fence of the Cul-de-sac and Prairie des Noyers joined, in the time of the Grand Parque until the fence fell down, then the Prairie des Noyers was fenced in separately. The fence separated the Prairie des Noyers from the common. West and north line of Prairie des Noyers had fence thereon. There was no fence on the east end of the Cul-de-sac. The was the great fence (common field fence) on the east of the field lots. The north line of the fence of the Prairie des Noyers was on the north line of Jeanett's lot. Here was the last lot of the Prairie des Noyers to the north. The Prairie des Noyers was more west than the Cul-de-sac.

L'Abbe's testimony.

Jacques L'Abbe testified as follows:

I was born in St. Louis seventy-two years ago; I have always resided here until twenty-eight years ago, when I went over to Caho-
kia, Ills., where I have resided ever since. I knew a man
90 named Roy, in the time of the Spanish government; he lived on 2d street, on the east side, in the lower part of the town. He was a farmer, he was a married man, he had four children, named Francois, the eldest, Eustache, the second oldest, Louison, the youngest son, and a daughter whose name I do not exactly recollect. They were also called by the family name of Caillou. I know where the fields of the Cul-de-sac were situated; they were situated in the Cul-de-sac, about three miles from the old town of Saint Louis. I had a lot there myself. Madame Chauteau owned the most northern of the Cul-de-sac fields; then came Jacques or Guillaume Landoise; then Guillaume Lecompte, then came Moutard. Moutard was the most southern. Roy Caillou had a lot there. I worked there for him myself. He lost a horse there that drowned in the spring. Mr. Chou-

teau took my lot in his mill tract, as he took other lots; he took the whole of the Cul-de-sac in his mill tract, except the land of Madame Camp. The Cul-de-sac was then prairie land. The whole of the Cul-de-sac was cultivated to my knowledge. The Cul-de-sac never was timbered land; there was some timber on the edges of it; the only trees in the Cul-de-sac were such as had been
91 planted for shade. I have seen the Cul-de-sac frequently, from time to time, up to the present time; about a month ago I saw again and went through it. About 56 or 57 years ago the common field fence built about the town of St. Louis fell down. Roy Caillou died some six or seven months before the fence fell down. After the falling of the fence, the Cul-de-sac fields were not cultivated. The fence fell down some three or four years before the change of government. The reason these fields were no longer cultivated was because the fences had fallen down; the cattle overran them; there was no force sufficient to rebuild the fences; it was the case with the Cul-de-sac fields as well as with the other common fields.

Cross-examination:

Last October was the last time I was in the Cul-de-sac. I was in the public road which passes through the Cul-de-sac; this was the Manchester road. I know where Rock Spring is; it is in the end of the Cul-de-sac lots. I knew Calve; I don't know if Calve had a lot there. I knew Hubert Tabeau; I don't know if he had a lot there. Guion had a lot there. Roy's lot was north of Guion's lot.
92 Madame Du Breuil had a lot there on the north. Roy's lot was to the south of Madame Du Breuil's. Madam Verdon's lot came next north to Madame De Breuil's lot; then came Jacques l'Abbe's lot; then Madame Camp's. Yostis had a lot there, which he had sold to Madame Camp. Yostis' lot was part of that which I have designated as Madame Camp's. The lot immediately south of Guion's belonged to Mr. Moutard. The lot immediately north of Guion's belonged to Madame Chauteau; the lot on the north of Madame Chauteau belonged to Madame Lardoise, called Vashard. Mr. Roy Caillou owned the lot immediately north of Madame Lardoise. I knew Madame Lecompte, who was married to Mr. Guillaume Lecompte. When he married Madame Lecompte, he took and was called by the name of Guillaume Lecompte. Anrable Guyon was the son of Madame Lecompte by her former husband; she never had children by Guillaume Lecompte. Mr. Moutard had the lot immediately south of Madame Lecompte; then came the Barriere des Noyers, which was the south boundary line. Moutard's line was not all cultivated to the extreme end of it, on account of the steep-
93 ness of a hill which had wood upon it; but it was Moutard's land, nevertheless; all cultivable portions being cultivated. Moutard's land was one of the Cul-de-sac common fields, and it was bounded on the south by the Barriere des Noyer.

Re-examined in chief:

There was no other southern boundray to Moutard's land but the Barriere des Noyer. The western line of the common field lots did

not extend further west than the western line of the Cul-de-sac fields. Both fields were bounded west by a strip of public domain; then comes Gratiot's land. This strip of public domain was heavily timbered. The Cul-de-sac fields were a little east, about an arpent of the Rock Spring.

Re-cross-examination:

I don't know exactly the width of the public domain between these fields and Mr. Gratiot's lands; believe it to be about thirty arpents; have been informed so. I believe this public domain strip was thirty arpents wide. I never measured it; I believe it is so wide because my niece has lost ten arpents off of her piece of land. My niece was named Therese, the daughter of Henri Vincent Bouis; she is now living. Her land was at the west end of the Cul-de-sac,
on the hill; it was one of the Cul-de-sac fields. The Rock
94 Spring was on Mr. Yosdi's lot.

Examined-in-chief:

My niece's land was the same as that which I had cultivated in the Cul-de-sac; it has been transported to where it is now by the government, to compensate the owners for and instead of the lands which were taken into the Chouteau mill tract.

William Milburn's testimony.

William Milburn being dead, his testimony on the first trial was read from the bill of exceptions thereof.

That he had been here since 1816. Had been in surveyor general's office as clerk, and as surveyor general. He was in that office until 1841, and was familiar with localities about St. Louis. Cul-de-sac was where the hills open from north to south. They have all been surveyed west of Chauteau's mill tract.

The defendant then asked him the following questions:

Were the surveys, in your opinion as a surveyor, right or wrong? (Objected to by plaintiff as incompetent, and objections overruled and exceptions taken.)

95 Answer. As to the old claims, they were wrong. As to those confirmed by Hunt, they were right, because Hunt's confirmations called for being bounded east by Chouteau's mill tract. As to those confirmed by Bates in 1816, they should be surveyed in the Chouteau mill tract, that is, the Cul-de-sac should be. In the location the surveyor must be governed by the most probable calls. There was a common field called Cul-de-sac. It was supposed to be a field of contiguous concessions from north to south. Where the call is for the east by the mill tract, the survey must be bounded east by that tract; tho' I think the call was wrong. Where claim is made before the recorder, I should examine that also. McRea's house is on the O'Carrol claim. His fence went to Joglin's lane and a good ways north. The improvements run out to near the Manchester road. The improvements were continually, frequently, ex-

tended from 1827 to present time. Dr. Lane was administrator of Wm. McRea, and then Mr. Gamble. The were signs of cultivation in the west part of Chouteau mill tract as late as 1816. There was no cultivation west of it. There were pretty smart trees on the land
west of the Chouteau mill tract. No signs of cultivation west
96 of said mill tract in 1816. Pretty good rail trees were there;
the growth was black jack, good size. Larger trees were cut down in former times. Rock spring was in a place of general resort.

Wm. C. Lane's testimony.

Wm. C. Lane, for plaintiff, testified as follows:

Knows Cul-de-sac fields; bought of Cayoux in 1825, Aug. 1st; knew Col. Wm. McRea; charges of neglect of duty preferred in Washington against Col. Wm. McRea, and he went on to meet them, and left his affairs to me. He requested me to act as his adm'r; Lindell declined to act as such. I held the property of McRee as actual curator until I was requested to act as such. Wm. McRee made no more claim to Roy tract than he did to Lecompte lot. I cannot tell how far he claimed north; but did not claim Roy's tract. Was a cabin; it still stands; I thought it was on the Jeanette tract, and think so still. Wm. McRea never claimed Roy tract. Sam. Mc. Ree set up claim to it in 1845, when he fenced in the Brammel part of the tract, and I remonstrated with him for doing so. When I sold to Sutter, Sommers, and Brammel, I thought I had possession of the
Roy tract. When I first knew these lands there was but
97 some poles on it. The Cul-de-sac was bounded east by the
Chouteau mill tract, and west by Gratiot. Cul-de-sac lots went down into the flat land, and then ascended a hill where Clayton road is; some flat land on northern Cul-de-sac lots. Knew nothing of survey of O'Carrol in 1830; neither did Wm. McRee. When I bought out Cayoux there was no survey. I negotiated for it before it was confirmed. Louis Cayoux represented to me that he was the heir to the whole. On investigation I found this was not so, and I took deed from all the heirs. I did not investigate the reason why Louis claimed all. Bird hunted up claim of Eustache Cayoux, and disinterred the will of Guitard, who devised it all to Francis and Eustache; it came down (the whole) to Francis and Eustache. I knew nothing of Guitard's will before I bought; I knew of Roy's will; knew of Samuel McRee very little here; he was an officer in the army; he was here but little before 1840; he was in Black Hawk war; don't know if he was in Florida. He was in Taylor's regiment in Black Hawk war. When I was negotiating with Cayoux I don't know if Francis and Eustache claimed the land; don't know anything pro nor con. When I bought the benefit was to Louis; he
was to get the benefit. When I bought did not know par-
98 ticular land, that is, could not point out the lines. These
common field lots were very uncertain; impossible to survey them. Don't know how surveyor put it there, (the Roy tract.) I

wanted 40 arpents. I was told that where some of the Cul-de-sac lots did not hold out in length, they were spread out in breadth. I claimed according to my north and south lines, and went east for quantity. Col. Samuel McRee always had an agent here. I acted for him until about 1841.

This was all the evidence offered or given in the cause.

The court then gave the following instructions for plaintiff, to the giving of which the defendants at the time excepted:

The certified copy of the registry of confirmations, read in evidence, is prima facie proof that Joachim Roy inhabited, cultivated, or possessed the land therein described prior to the 20 day of December, 1803.

The survey made by the government of the United States of the tract of land confirmed to Joachim Roy, or his legal representatives, is prima facie evidence of the true location of the land so confirmed.

99 And if the jury find from the evidence that the premises sued for in this case are within said survey No. 3,307, if the respective wills of Joachim Roy and Veronique Guitard, and the deeds read in evidence by the plaintiff are genuine, then the plaintiff is entitled to recover in this action, unless the jury shall find from the evidence that Joachim Roy, prior to the 20th Dec'r, 1803, abandoned his possession and claim of the said premises, or that the lot which he actually Cultivated and claimed in the Cul-de-sac common fields is not the same that is claimed in part by the plaintiff in this suit.

Abandonment of a lot or tract of land is the voluntary relinquishment of the former proprietor of all right or pretence of claim thereto, and such abandonment may be proved by facts and circumstances. And in the case under consideration, if jury find that Joachim Roy, prior to the 20th December, 1803, cultivated, inhabited, or possessed the land in question, before the jury can find that he abandoned the said land, the jury should be satisfied, from all the facts and circumstances given in evidence in this case, that

100 Roy voluntarily relinquished all right or pretence of claim to said land, although the jury may find from the evidence that Joachim Roy, prior to the 20th December, 1803, ceased to cultivate the land in question, that fact, of itself, is not sufficient to prove that he abandoned his claim to said land.

If the jury find for the plaintiff, they should assess his damages at the yearly value of the rents and profits of the premises in question from the 17th day of September, 1856, to date, and should also fix the monthly value of such rents and profits at this time.

The defendants then asked the following instructions, which the court refused to give, and the defendants excepted thereto at the time:

The evidence of right to the land in question, as shown in the confirmation and surveys given in evidence on the part of plaintiff,

is inferior to the evidence of right to the land as shown by the defendant in his testimony given to the jury in this case.

101 If the jury believe from the evidence that Joachim Roy and his representatives abandoned the possession of the land which said Roy cultivated before 1803, and all the right and title which said Roy had to the same, the plaintiff ought not to recover in this action.

If Joachim Roy cultivated a part of the lot in question before the 20 December, 1803, without having any right, title, or claim thereto, but such as the law imputed to him on account of such cultivation; if, several years before 1803, he ceased to cultivate, and never afterwards cultivated or possessed the same, or asserted any claim to the same as owner; if he died in 1801, and no person claiming to represent his rights did ever inhabit, cultivate, or possess the same, or assert any claim to the same as owner, these facts are strong evidence of abandonment, and the jury will be well warranted in finding that the plaintiff has no title to the land in question as derived from the said Joachim Roy.

If the jury find that Cadet Jean Riou, or his representatives, claimed, before the recorder of land titles, the land now em-

102 braced in the United States survey No. 3,307, in *in* order to make proof and get a certificate of confirmation therefor, under the act of Congress of May 26, 1824; that the recorder entered the claim on his record in the name of Riou, and made a certificate of confirmation in the name of Riou, and that subsequently the name of Riou was erased, and the name of Roy inserted in lieu thereof, such alterations of the record or certificate (both or either of them) was without authority and unlawful, and the said Roy or his representatives got no title thereby.

Relating to the original title of Roy.

The plaintiff claims under one Joachim Roy, in virtue of a confirmation to the said Roy, or his legal representatives, of the *the* title to a common field lot in, adjoining, or belonging to the town of St. Louis, by force of the act of Congress of June 13, 1812; and the court instructs the jury that that act of Congress gave no title to the said Roy or his representatives to the said field lot, unless, over and above the fact that the said Roy cultivated part of the land prior to the 20th of December, 1803; it also appears in proof that the said Roy had some right, title, or claim to the said land prior to the 20th of December, 1803, and that such right, right, title, or claim continued, and was in existence on the 13th of June, 1812.

103 Prior to the 20th of December, 1803, the bare fact that Joachim Roy cultivated a portion of land near the town of St. Louis did not make the said land a common field lot; and if it were, in fact, a common field lot, the bare fact of its cultivation by Roy did not give to the said Roy any right, title, or claim to the said lot, as against the government of Spain, France, or the United States.

Relating to the certificate.

1. The act of Congress of May 26, 1824, is the only law which empowered the recorder of said titles to issue certificates of confirmation of lots, the titles to which were confirmed by the act of June 13, 1812; and if the jury find that the recorder did, on the 30th July, 1825, or at any time within 18 months after the passage of the said act of 1824, issue a certificate of confirmation for the lot now in question to said Roy or his representatives, that certificate is the evidence of title in said Roy, or his representatives, provided by the act of Congress; and the plaintiff, in so far as he claims a part of said lot under the said Roy, ought to produce the said certificate in evidence, as a legal muniment of his title. If such certificate were issued by the recorder, he thereby exhausted his power in that respect under the statute, and had no power to issue another
104 and different certificate to the same party for the same lot in 1857.

2. The certificate of confirmation given in evidence is illegal and void, being without any authority of law.

3. The certificate of confirmation given in evidence is defective, and does not conform to the act of Congress of May 26, 1824, which is the only law which authorized the recorder to issue any such certificate.

4. In proceeding under the act of Congress of May 26, 1824, the recorder acted judicially. He had power under the act for eighteen months after its passage to take the proofs offered by the claimant, "of the fact of inhabitation, cultivation, or possession (of the lot,) together with its extent and boundaries;" and having taken such proofs, if they were satisfactory to him, it was his duty then to issue a certificate of confirmation, setting forth the extent and boundaries of the lot, as proven before him in 1825. And in issuing a certificate in 1857, he had no lawful power to set forth the extent and boundaries of the lot by a survey then recently made, instead of the
105 testimony lawfully taken before him long before the survey was made.

And the defendants pray the court to sign and seal this their bill of exceptions, which is done.

J. B. LORD. [SEAL.]

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Charles A. Mantz, clerk of the St. Louis land court within and for said county, certify the foregoing transcript to be a true and correct copy of the record and proceedings had (as required) in the case of Levi B. Clark, plaintiff, and Martin Hammerle, defendant, as fully as the same remains of record in my office.

In testimony whereof, I hereto set my hand and affix the seal of our said court, at office in the city of St. Louis, this twelfth day of July, A. D. 1859.

(Sig.) CHAS. A. MANTZ, *Clerk*. [SEAL.]

106 And afterwards, to wit, at the October term of this court, 1860, the following further proceedings were had in this cause:

SATURDAY, *December 22d*, 1860.

The court orders each of the following causes to be continued till the next term, and each of same is continued accordingly.

Continuance.

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vs.
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vs.
* * * * * *

LEVI B CLARK
vs.
MARTIN HAMMERLE.

* * * * * *
vs.
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* * * * *
vs.
* * * * *

And afterwards, to wit, at the March term of this court, 1863, on the 20th day of April, an assignment of errors was filed in this cause, which assignment was in the words and figures following:

Assignment of errors.—Filed March, 1863.

In the supreme court, March term, 1863.

LEVI B. CLARK
vs.
MARTIN HAMMERLE *et al.* } Assignment of error.

107 The court below erred in admitting evidence offered by plaintiff.
In excluding evidence offered by defendants.
In giving instructions asked by plaintiff; and
In refusing instructions asked by defendants below.

C. GIBSON.

Submission of cause.

And afterwards, to wit, at the same term of this court, the following further proceedings were had in this cause:

THURSDAY, *May 7th*, 1863.

LEVI B. CLARK, resp.,
vs.
MARTIN HAMMERLE, app. } 45.

Now at this day come the parties by their attorneys, and, after argument herein, they submit this cause to the court.

And afterwards, to wit, at the same term of this court, the following further proceedings were had in this cause:

108 *Brief filed.*

MONDAY, *May 11th*, 1863.

LEVI B. CLARK, resp.,
vs.
MARTIN HAMMERLE, app't. } Respondent's brief filed.

And afterwards, to wit, at the October term of this court, 1865, the following further proceedings were had in this cause.

Submission on brief.

MONDAY, *November 6th*, 1865.

LEVI B. CLARK, respondent,
vs.
MARTIN HAMMERLE, app't.

Now at this day come the parties herein, each by his attorney, and submit this cause to the court upon the briefs herein filed.

And afterwards, to wit, at the same term of this court, the following further proceedings were had in this cause:

109 *Judgment.*

MONDAY, *November 13th*, 1865.

LEVI B. CLARK, respondent,
vs.
MARTIN HAMMERLE, appellant. } Appeal from St. Louis land court.

Now again come the parties aforesaid, by their respective attorneys, and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis land court, be in all things affirmed, and stand in full force and effect, and that said respondents recover of said appellants his costs and charges herein expended, and have execution therefor.

Opinion filed.

110 *Opinion of the court.*

And upon the same day an opinion of this court was filed in this cause, which opinion was in the words and figures following, to wit:

In the supreme court, Oct. T., 1865.

LEVI B. CLARK, res.,
v.
MARTIN HAMMERLE, app't.

The plaintiff claimed title to the land in controversy as a part of a common field lot of the Cul-de-sac common field of St. Louis, as having been confirmed to to Joachim Roy's legal representatives, by the act of Congress of the 13th of June, 1812, on the ground of inhabitation, cultivation, and possession, prior to the 20th day of December, 1803; and he showed a donated title from them to himself. To prove this title, he gave in evidence certified copies of the registry of claims proved before the recorder of land titles under the act of 26th of May, 1824, the registry of certificates of confirmation or list of claims proved an official survey by the surveyor general of the lot so proved, and a certificate of confirmation issued by the recorder of land titles in 1857. Documents of like character with these have so often been held to be admissible as prima facie evidence of such titles, that it is not deemed necessary now to discuss the subject further.—(Machlet *v.* Dubreuil, 9 Mo., 473; Bichler *v.* Coonce, 9 Mo., 347; Louland *v.* Allen, 18 Mo., 590.)

111 The two documents first named speak of the claim as one and a half arpens in front "by about thirty in depth," bounded north by Guion, south by Tabeau, east by Aug. Chouteau's mill tract, and west by Charles Gratiot. The lot appears to have been surveyed according to the calls for boundaries, rejecting the call for the quantity of "about thirty arpens in depth," so far as that call was repugnant to the calls for fixed boundaries. This was unquestionably the correct mode of surveying the lot proved, and the certificate of confirmation which was issued thereon by the recorder of land titles in 1857 very properly confirmed to the official survey so made.

These proofs showed title in Roy's representatives to the lot described in the survey and certificate of the date of the act of 13th June, 1812.

The defendant claimed title to the same land under a New Madrid location of the date of 1818. Such title, though inferior in nature, placed him in a position that enabled him to dispute the cor-

112 rectness and validity of the prima facie superior title of the plaintiff. He undertook to invalidate this title by evidence offered for the purpose of showing that the survey of the lot and the certificate of confirmation were incorrect in respect of the location, extent, and boundaries of the lot claimed and cultivated or possessed by Roy, prior to 1803, had been abandoned by him and his legal representatives before the 13th day of June, 1812.

Concerning the location, extent, and boundaries, he offered in evidence a letter from Wm. Carr Lane to Surveyor General Milburn, dated June 20, 1840, while Lane was owner of the plaintiff's title, in which he asserted as of his own certain knowledge that the proof taken before the recorder on page 116, of No. 2, of his minutes, called for forty arpens in depth instead of thirty, before the record was altered by erasure, and that the claimant's name (Bion,) and the word forty had been erased, and a subsequent interlineation made of another name (Roy,) and the word thirty, together with certified copies
113 of these minutes, (No. 2, pp. 49 and 50,) showing the claims of Joachim Roy's legal representatives for a lot of one and a half by about forty arpens in depth, bounded north by a lot formerly owned by Mad. Le Compte; east by Widow Camp's legal representatives; south by Tabeau; and west by land unknown near to Gratiot's, and the extract from the registry of certificates above mentioned, which were admitted, and also the depositions of Francis and Eustache Caillou, thereto annexed, containing the testimony taken by the recorder in proof of the cultivation and possession of the lot so claimed, which were excluded.

Some other documentary evidence relating to adjoining claims was admitted. The testimony of Adolph Renard, offered for the purpose of showing that certain marginal annotations on pages 116 of Hunt's minutes, were in the handwriting of Recorder Hunt, was excluded. There was some testimony which tended to show that the Cul-de-sac common fields were embraced within the western part of
114 Chouteau's mill tract, and that they did not cover the land in dispute. The jury have passed upon the question of location, upon the evidence that was before them, and we need concern ourselves only with that which was excluded.

In the former decision on this case (27, Mo., 55,) these erasures and alterations were not regarded as in any way defeating the right and title of Roy and his representatives, who showed a confirmation independent of them; and we do not see how they could have any material effect upon the title shown by the plaintiff. The marginal annotations were held to be no evidence whatever as between these parties, and they will be regarded as wholly immaterial here. So far as these erasures and interlineations furnished evidence that the claim had a depth of forty instead of thirty arpens, they were clearly not evidence for the plaintiff; but there was ample evidence without them to authorize the survey as it was made. So far as they tended to show that one Riou had claimed the same lot before the recorder, they were immaterial to the issue, and as tending to show another
115 and different lot, the defendant had the benefit of the evidence with the jury. There was no evidence that Riou had ever obtained a title to this lot. The evidence amounted to very little toward rebutting the plaintiff's title.

The defendant complains of the exclusion of the depositions or testimony of the two Caillous. For what purposes and to what extent these depositions are admissible in evidence, the previous decisions of this court are by no means clear; nor shall we now undertake to

lay down any rule on the subject. It appears that on a former trial these depositions were read in evidence as a part of the documents offered by the plaintiff, and this court held that being thus before the jury they were open to the defendant for what they were worth as evidence of abandonment by the two Cailloux, but that in themselves they were not admissible evidence of the facts related in them. Here they were offered by defendant, and, as we think, rightly excluded.

116 There was little or no evidence before the jury which had any tendency to prove abandonment. Roy died in 1801, leaving the lot to Verenique Guitard. She died in 1808, leaving it to the two Cailloux. It was confirmed to Roy's representatives in 1812, and in 1825 they brought the claim before the recorder of land titles.

The Spanish law of abandonment continued in force until 1816, and any abandonment that could affect this lot must have taken place before 1812. To constitute adandonment, there must be a departure of the owner corporeally from the land, with the intention that it shall be no longer his. Corporeal or actual possession need not be retained, but if the owner retain the property of it in his mind, no other person has a right to enter, and it is not abandoned.—(Landis *v.* Perkins 12 Mo., 256; Fine *v.* Public schools, 30 Mo., 666.)—The intention to abandon may be inferred from facts and circumstances which are competent to go to the jury as evidence from which that fact may be rationally inferred by the jury; and it is peculiarly a question of fact for the jury. Ceasing to cultivate, mere inaction, removal

117 to another place, is not enough, without some act of disclaimer or other fact importing and showing a positive intention to abandon all claim of ownership.—(Pajet *v.* Schiehel, 11 Mo., 185.) Where the owner went to France and signified his intention never to return, that was held to be good evidence of ab andonment, (Salle *v.* Primm, 3 Mo., 530,) and where the owner quit his occupancy, removed his mill from the land, and, in 1808, made a sworn inventory as an insolvent, which did not contain the lot, these facts were held to be strong evidence for the jury.—(Barada *v.* Blumenthal, 20 Mo., 162.) We find no evidence in this record of any facts of this nature, which can be said of themselves to import, or to have any direct tendency to show an intention on the part of any one of the successive owners and claimants, during the period of time when they were owners, prior to 1812, to abandon their claim to this lot. The possession of land is presumed to be with the owner of the title until the contrary is made to appear. Even if the depositions of the

118 two Cailloux had been admissible in evidence, they could have no proper effect to prove an abandonment of this lot by them, during the period between 1808 and 1812, when they were owners and might have abandoned their claim. The new fact that they stated in their testimony, apparently taken in proof of the claim of Riou, that they had no interest in the lot, if it had been in fact the same lot as that of Roy, would import no more than that if they were then the owners of it, they were not at that moment aware of the fact.

The instructions given for the plaintiff laid the case fairly before the jury on the questions of title, of identity, and of abandonment. It is objected that they were too narrow, and confined the question of abandonment to Roy alone. It may be answered that there was no evidence of any abandonment by his representatives, on which to predicate any further instructions in the matter; and the instructions which were refused for the defendant, on the same subject, were rightly enough refused, for the reason that there was no foun-
119 dation in the evidence on which such instructions could justly be predicated.

The fifth and sixth instructions asked by defendant had no basis in the law or the evidence, and were properly refused. The plaintiff had shown a complete prima facie title; the defendant had shown nothing that could invalidate it; and nothing remained but the matter of the true location, and on that the jury were to pass as a matter of fact. The first instruction was correctly refused for the same reasons.—(Page *v.* Schisel, 11 Mo., 167; Guitard *v.* Stoddard, 16 How., (U. S.,) 510.)

The report of the surveyor general to the commissioners of the General Land Office, detaining the history of his operations in making surveys, was properly excluded. The official surveys of the lots in question were the proper evidence of the final action of the surveyor general on the subject of those surveys.

The case appears to have been fairly submitted to the jury upon correct instructions as to the law of the case, and there being
120 no material error unjustly affecting the rights of the defendant, the verdict must be allowed to stand.

Judgment affirmed. Judge Wagner concurs. Judge Lovelace did not sit.

N. HOLMES.

And afterwards, to wit, in vacation, on the 3d day of February, 1866, a petition was filed in this cause, which petition was in the words and figures following:

Petition for writ of error.

In the supreme court of the State of Missouri.

LEVI B. CLARK
vs.
MARTIN HAMMERLE, MARY MCREE.

121 To the honorable Nathaniel Holmes, judge of the supreme court of the State of Missouri:

The above-named defendants state that a judgment was on the 13th day of November, 1865, rendered at its October term, 1865, by the supreme court of the State of Missouri in said cause in favor of the said Levi B. Clark, plaintiff therein, against the said Martin Hammerle and Mary McRee, defendants therein. That said judgment is in the highest court of the State of Missouri, in which judgment

could be had in said cause. That the said judgment is final. That in said cause there was drawn in question, and set up as a defence on the part of defendants, statutes of the United States, and the said judgment and decision of the said supreme court was adverse to the defence and right in defendants so set up by the said defendants, and the same so appears by the records and proceedings in said cause.

Wherefore the said defendants have sued out from the office of the circuit court of the United States for the district of Missouri
122 a writ of error in said cause to the Supreme Court of the United States, and said defendants pray that the same may be allowed.

GLOVER & SHEPLEY,
Att'ys for Def'ts.

And also upon the same day was filed in this cause a citation in the words and figures following:

Citation.

The United States of America to Levi B. Clark, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Martin Hammerle and Mary McRee are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error
123 as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathaniel Holmes, one of the judges of the supreme court of the State of Missouri, this first day of February, in the year of our Lord one thousand eight hundred and sixty-six.

N. HOLMES.

Return of service.

And upon the back of this citation a return was indorsed, which was in the words and figures following, to wit:

Executed this writ in the county of St. Louis, on the 3d day of February, 1866, by delivering a copy of the same to Levi B. Clark.

JOHN C. VOGEL, *Sheriff*.
By H. WILKINS, *Deputy*.

Fee, $1 50, paid by Att'y Shepley.

And upon the same day a bond was filed in this cause, which bond was in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, Mary McRee, as principal, and Charles Gibson, as security, are held and firmly bound unto Levi B. Clark in the full and just sum of one thousand
124 dollars, to be paid to the said Levi B. Clark, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of February, in the year of our Lord one thousand eight hundred and sixty-six. Whereas lately, at the October term, A. D. 1865, of the supreme court of the State of Missouri, in a suit depending in said court between Levi B. Clark, plaintiff, and Martin Hammerle and Mary McRee, defendants, judgments was rendered against the said defendants, and the said defendants, as above named, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Levi B. Clark, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said Martin Hammerle and Mary McRee shall prosecute said writ to effect, and answer all damages and costs if they fail to make
125 good their plea, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] MARY McREE.
[SEAL.] C. GIBSON.

Sealed and delivered in presence of—
[SEAL.]

Approved by—

N. HOLMES,
One of the Judges of the Supreme Court of the State of Missouri.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court within and for the State aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of the record and proceedings in the cause herein above stated, as fully as the same appears of record, and as shown by the papers now on file in my office relating to said cause.

Witness my hand and the seal of said court, at office, this
126 14th day of November, A. D. 1866.

[L. S.] O. T. FISHBACK, *Clk.*

127 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, at October term, A. D. 1865, between Levi B. Clark, plaintiff, and Martin Hemmerle and Mary McRee, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this twenty-seventh of January, in the year of our Lord one thousand eight hundred and sixty-six.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

Allowed by—

[L. S.]

BEN. F. HICKMAN,
Clerk C. C. U. S., Missouri District.

50-c. in. rev. stamp, cancelled.

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court within and for the State aforesaid, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, held at Washington, a full, true, and complete transcript of the record and proceedings in the within entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 14th day of November, 1866.

[L. S.]

O. T. FISHBACK, *Clk.*

Filed Feb. 3, 1866.

O. T. FISHBACK, *Clk.*